LOCAL GOVERNMENT ELECTIONS ACT:
A Proposal for Consolidation and Modernization

Supplement to the Final Report of
the Advisory Committee on Municipal Elections
to the Minister of Municipal Affairs

February, 1987

PREFACE

The draft Local Government Elections Act presented on the following pages was prepared at the request of the Advisory Committee on Municipal Elections as a supplement to its final report to the Minister of Municipal Affairs, entitled "Local Government Elections in Ontario".

This document has been prepared for discussion purposes only and its contents do not necessarily reflect the views of the Ministry of Municipal Affairs.

The draft legislation is based on the Municipal Elections Act. It incorporates a number of provisions pertaining to local government elections which are currently found in other statutes, such as the Municipal Act and the Education Act, and includes both modified and new provisions which reflect the Committee's final recommendations. The draft Act is written in modern, non-sexist language and more up-to-date terminology has been adopted for the sake of clarity and simplicity.

To assist the reader in comparing the draft provisions with the Committee's recommendations and with existing legislation, comments have been inserted, where appropriate, following the individual sections, subsections or clauses.

The members of the Committee are grateful to Brian Loreto, a lawyer who acted as a consultant to the Committee and who prepared the draft legislation and to Sylvi Woldenga, who provided administrative support services.

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AN ACT RESPECTING ELECTIONS FOR LOCAL GOVERNMENT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION

1.-(1) In this Act, Interpretation

1. "advance vote" means a vote taken prior to voting day as required by section 75;

   Comment: Compare with s. 1, para. 1 of the Municipal Elections Act and s. 1 (1)(a) of the Election Act, 1984.

2. "assessment commissioner", in relation to a municipality or locality, means the assessment commissioner appointed under the Assessment Act for the assessment region in which the municipality or locality is situated; R.S.O. 1980, c. 31

   Comment: Compare with s. 1, para. 2. of the Municipal Elections Act.

3. "assistant recount officer" means a person appointed by the recount officer to assist him or her in the conduct of a recount;

   Comment: See Recommendation 66.

4. "assistant returning officer" means a person appointed by the returning officer to assist him or her in the conduct of an election;

   Comment: Compare with s. 1, para. 3 of the Municipal Elections Act.

5. "assistant revising officer" means a person appointed by the revising officer to assist him or her in the revision of a preliminary list;

   Comment: Compare with s. 1, para. 4 of the Municipal Elections Act.

6. "by-election" means an election other than a general election;

   Comment: Compare with s. 1, para. 20 of the Municipal Elections Act and s. 1 (1), para. 3 of the Election Finances Act.

7. "Cabinet" means the Lieutenant Governor in Council;

8. "candidate", except in section 138, means a person who is nominated for election to office in accordance with this Act and whose nomination is certified by the returning officer;

   Comment: Compare with s. 1, para. 5 of the Municipal Elections Act and s. 1 (1)(d) of the Election Act, 1984.

9. "chair" means the chair of the Ontario Local Government Elections Commission;

   Comment: See Recommendation 2 (f).

10. "clerk" means the clerk of a municipality;

    Comment: Compare with s. 1, para. 6 of the Municipal Elections Act.

11. "Commission" means,

    (a) except in Part XIV, the Ontario Local Government Elections Commission, and

    (b) in relation to Part XIV, the Commission on Election Finances;

12. "constable" means a police constable or a person appointed as a constable,

    (a) by the returning officer to aid him or her in maintaining peace and order at an election,

    (b) by the deputy returning officer to aid him or her in maintaining peace and order at a voting station,

    (c) by the revising officer to aid him or her in maintaining peace and order at the revision of a preliminary list, or

(d) by the recount officer to aid him or her in main aining peace and order at a recount,

Comment: Compare with s. 1, para. 7 of the Municipal Elections Act.

13. "corrupt practice" means any act or omission, in connection with an election, in respect of which an offence is provided under the Criminal Code (Canada) or which is a corrupt practice under this Act; R.S.C. 1970, c. C-34

Comment: Compare with s. 1, para. 8 of the Municipal Elections Act and s. 1 (1)(e) of the Election Act, 1984.

14. "council" means the council of a municipality;

15. "deputy returning officer" means a deputy returning officer appointed by the returning officer for a voting station under this Act;

Comment: Compare with s. 1, para. 9 of the Municipal Elections Act.

16. "election" means a general election and a by-election and includes the submission of a by-law or question to the electors to obtain their assent or opinion;

Comment: Compare with s. 1, para. 10 of the Municipal Elections Act.

17. "election assistant" means a person appointed by the returning officer to assist him or her in the conduct of an election;

Comment: Compare with s. 1, para. 11 of the Municipal Elections Act.

18. "election officer" means,

(a) a returning officer, deputy returning officer, vote clerk and,

(i) any assistant returning officer, election assistant, information officer, interpreter, constable or other person appointed by the returning officer to assist him or her in the preparation for and the conduct of an election, and

(ii) any constable appointed by the deputy returning officer to aid him or her in maintaining peace and order at a voting station,

(b) a revising officer and any assistant revising officer, revision assistant, interpreter, constable or other person appointed by the revising officer to assist him or her in the revision of a preliminary list, and

(c) a recount officer and any assistant recount officer, recount assistant, interpreter, constable or other person appointed by the recount officer to assist him or her at a recount;

19. "election year" means the year in which a general election is held;

Comment: Compare with s. 1, para. 12 of the Municipal Elections Act.

20. "elector" means a person entitled under this Act to vote in an election;

Comment: Compare with s. 1, para. 13 of the Municipal Elections Act and s. 1 (1)(g) of the Election Act, 1984.

21. "enumeration list" means a list of electors compiled by the assessment commissioner under section 34;

22. "general election" means an election to fill all the offices subject to election under this Act;

Comment: Compare with s. 1, para. 44 of the Municipal Elections Act and s. 1 (1)(i) of the Election Act, 1984.

23. "holiday" means a holiday as defined in the Interpretation Act; R.S.O. 1980, c. 219

Comment: Compare with s. 1, para. 15 of the Municipal Elections Act.

24. "information officer" means an information officer appointed by the returning officer for a voting place under this Act;

25. "local board" means a local board as defined in the Municipal Affairs Act and includes a police village, but does not include a school board; R.S.O. 1980, c. 303

    Comment: Compare with s. 1, para. 16 of the Municipal Elections Act.

26. "locality" means territory without municipal organization that is deemed a district municipality under the Education Act; R.S.O. 1980, c. 129

    Comment: Compare with s. 1, para. 17 of the Municipal Elections Act and s. 1, para. 27 of the Education Act.

27. "Minister" means the Minister of Municipal Affairs;

    Comment: Compare with s. 1, para. 18 of the Municipal Elections Act.

28. "municipality" means a city, town, village or township and, unless the contest suggests otherwise, includes a regional municipality;

    Comment: Compare s. 1, para. 19 of the Municipal Elections Act.

29. "nomination day" means the last day for filing nominations;

    Comment: Compare with s. 1, para. 21 of the Municipal Elections Act.

30. "oath" includes an affirmation;

    Comment: Compare with s. 1, para. 22 of the Municipal Elections Act.

31. "office", unless the context suggests otherwise, means an office as described in clause 4 (a);

    Comment: Compare with s. 1, para. 23 of the Municipal Elections Act.

32. "owner or tenant" means a person enumerated as owner or tenant of land separately assessed or liable to be separately assessed under the Assessment Act;

    Comment: Compare with s. 1, para. 24 of the Municipal Elections Act.

33. "person" means a natural person and, in relation to Parts XIII and XIV, includes, only in so far as the making of contributions is concerned, the personal representative of the estate of a person who has died leaving a will;

    Comment: See Recommendation 25.

34. "preliminary list" means a preliminary list of electors;

    Comment: Compare with s. 1, para. 29 of the Municipal Elections Act.

35. "prescribed", unless the context suggests otherwise, means prescribed by the Ontario Local Government Elections Commission;

    Comment: Compare with s. 1, para. 30 of the Municipal Elections Act and s. 1 (1)(1) of the Election Act, 1984.

36. "Protestant separate school elector" means an elector who is a Protestant separate school supporter or who is a Protestant and the spouse of such supporter;

    Comment: Compare with s. 143 of the Education Act.

37. "public school elector" means an elector who is not a Roman Catholic separate school elector or a Protestant separate school elector;

    Comment: Compare with s. 1, para. 31 of the Municipal Elections Act and s. 1, para. 43 of the Education Act.

38. "quorum", unless the context suggests otherwise, means a majority of the members of council or of a school board or a local board or of the trustees of a police village, as the case may be;

    Comment: Compare with s. 1, para. 32 of the Municipal Elections Act.

39. "record of voters" means the copy of the voters' list designated by the deputy returning officer under subsection 70 (6) as the record of voters for the voting station;

40. "recount" includes,

    (a) adding again the votes cast for each candidate or for each position on a by-law or question as recorded in the statements of the vote returned to the returning

officer by the deputy returning officers of the voting stations in an election, and

(b) examining and counting the used and counted, the used but unmarked, the unused, the rejected, the cancelled and the declined ballots relating to an election;

41. "regional municipality" includes a metropolitan municipality, a restructured county and the District Municipality of Muskoka;

42. "residence", and similar expressions used in relation to a person, means his or her true, fixed, permanent home or lodging place to which, whenever he or she is absent, he or she has the intention of returning, subject to the following rules:

(a) The place where a person's family resides shall be his or her residence unless he or she takes up or continues his or her residence at some other place with the intention of remaining there, in which case he or she shall be deemed to be a resident of that other place.

(b) The place where a person occupies a room or part of a room as a regular lodger or to which he or she habitually returns, not having any other permanent lodging place, shall be deemed to be his or her residence.

(c) No person shall be deemed to be resident in quarters or premises that are generally occupied for less than six months of the year only and generally remain unoccupied for six or more months of the year, unless,

(i) he or she is occupying these quarters in the course of and in the pursuit of his or her ordinary gainful occupation,

(ii) he or she is occupying these quarters in the course of and in the pursuit of his or her studies at an educational institution, or

(iii) he or she has no quarters in any other municipality to which he or she might at will go;

Comment: See Recommendation 27. Compare with s. 1, para. 24 of the Municipal Elections Act and s. 1 (1)(o) of the Election Act, 1984.

43. "revision assistant" means a person appointed by the revising officer to assist him or her in the revision of a preliminary list;

44. "Roman Catholic separate school elector" means an elector who is a Roman Catholic separate school supporter or who is a Roman Catholic and the spouse of such supporter;

Comment: Compare with s. 1, para. 42 of the Municipal Elections Act and s. 1 (1)(1), para. 61 of the Education Act.

45. "school board" means a board as defined by the Education Act and includes the French-language section and the English-language section of a board under Part XI-A of that Act;

Comment: Compare with s. 1 (1), para. 3 and ss. 257a, 277d and 277t of the Education Act.

46. "scrutineer" means a person appointed by a candidate or by a council or school board to act as a scrutineer at an election or at a recount;

Comment: Compare with s. 1, para. 35 of the Municipal Elections Act.

47. "spouse" means a person of the opposite sex to whom the person is married or with whom the person is living outside marriage in a conjugal relationship of at least one year's duration;

Comment: Compare with s. 1, para. 37 of the Municipal Elections Act.

48. "trade union", in relation to Parts XIII and XIV, means a trade union as defined by the Labour Relations Act or the Canada Labour Code that holds bargaining rights for employees in Ontario to whom those Acts apply and includes any central, regional or district labour council in Ontario;

R.S.O. 1980, c. 128

R.S.C. 1970, c. L-1

Comment: Compare with s. 1 (1), para. 22 of the Election Finances Act.

49. "vote clerk" means a vote clerk appointed by the returning officer for a voting station under this Act;

50. "voters' list" means the list of electors for each voting division as revised and certified by the revising officer;

    Comment: Compare with s. 1, para. 26 of the Municipal Elections Act and s. 1 (1)(k) of the Election Act, 1984.

51. "voting day" means the day fixed for voting at an election;

    Comment: Compare with s. 1, para. 25 of the Municipal Elections Act.

52. "voting division" means a voting division established by the returning officer under this Act;

    Comment: Compare with s. 1, para. 28 of the Municipal Elections Act and s. 1 (1)(j) of the Election Act, 1984.

53. "voting place" means the place designated by the returning officer within which the voting station or stations for the conduct of the vote are located;

    Comment: Compare with s. 1, para. 27 of the Municipal Elections Act.

54. "voting station" means the area provided by the returning officer within a voting place where an elector may cast his or her vote in an election;

    Comment: Compare with s. 1, para. 27 of the Municipal Elections Act.

55. "ward" includes any other form of division of a municipality established for the purpose of an election under this Act and, in relation to school board elections, includes an electoral area or zone as established under the Education Act or any other Act.

(2) Where a corporation is associated with another corporation under section 256 of the Income Tax Act (Canada) and where one or both of those associated corporations does or do not carry on an active business as that expression is defined in paragraph 125 (7)(a) of that Act, the two associated corporations shall be considered as a single corporation for the purposes of Parts XIII and XIV of this Act.

Associated corporations

R.S.C. 1952, c. 148

Comment: Compare with s. 1 (2) of the Election Finances Act.

PART I

ADMINISTRATION

Time

References to time

2.-(1) Any expression of or reference to time in this Act refers to the time that is in effect locally, that is, either standard time or daylight saving time, as the case may be.

Comment: Compare with s. 120 (2) of the Municipal Elections Act and s. 2 of the Election Act, 1984.

Holidays

(2) Where a day specified in this Act for the undertaking of a proceeding pertaining to an election falls on a holiday, the day specified shall be deemed to be the immediately preceding day that is not a Sunday or holiday.

Comment: Compare with s. 120 (1) of the Municipal Elections Act and s. 9 (b) of the Election Act, 1984.

Language of notices

3.-(1) Subject to subsection (2), any notices required to be posted, published or mailed under this Act may be printed in both the English and French languages, in the English language, in the French language or, where the number of such electors so warrants, in languages other than English or French.

Determination by council of language of notices

(2) The printing of notices in both the English and French languages, in the English language, in the French language or in languages other than English or French shall be determined by by-law of the council of the municipality.

Comment: Compare with s. 119 (3) of the Municipal Elections Act.

When to be passed

(3) A by-law under subsection (2) shall be passed not later than the 15th day of January in an election year and shall remain in force until repealed.

Comment: Compare with s. 119 (2) of the Municipal Elections Act.

Application of Act

Application of Act

4. Notwithstanding any other Act, this Act applies to all elections,

(a) to the offices of,

(i) member of the council of a municipality,

(ii) member of the council of a regional municipality where this office is required to be filled by the vote of the electors of an area municipality or the area municipalities,

(iii) trustee of a police village, and

(iv) member of a school board or of a local board whose members are to be elected at elections required by law to be conducted by the same officers and in the same manner as elections of members of the council of a municipality;

(b) to obtain the assent of the electors to any by-law required or authorized by law to be submitted to them for their assent at an election; and

(c) to obtain the opinion of the electors on any question required or authorized by law to be submitted to them for their opinion at an election.

Comment: Compare with s. 2 of the Municipal Elections Act.

Ontario Local Government Elections Commission

Commission established

5.-(1) There shall be established a commission to be known as the Ontario Local Government Elections Commission.

Comment: See Recommendation 2.

Composition and term of office

(2) Subject to subsection (3), the Commission shall be composed of,

(a) one person as a nominee of each of,

(i) the Association of Municipalities of Ontario,

(ii) the Ontario School Trustees' Council,

(iii) the Municipal Electric Association, and

(iv) the Association of Municipal Clerks and Treasurers of Ontario,

appointed, on the recommendation of their respective boards of directors, by the Cabinet for a term of not more than five years;

(b) one person, who is a member in good standing with the Law Society of Upper Canada, appointed by the Cabinet for a term of not more than five years;

(c) the Chief Election Officer, who has been appointed under the Election Act, 1984 and who shall be a member by virtue of that office; S.O. 1984, c. 54

(d) the chairman of the Commission on Election Finances, who has been appointed under the Election Finances Act, 1986 and who shall be a member by virtue of that office; S.O. 1986, c. 33

(e) one person appointed, on the recommendation of the Minister of Education, by the Cabinet for a term of not more than five years; and

(f) the chair of the Commission who shall be appointed, on the recommendation of the Minister of Municipal Affairs, by the Cabinet for a term of not more than five years.

Comment: See Recommendations 2 and 3. Compare with s. 2 (1) of Election Finances Act, 1986.

(3) No person who, Eligibility

(a) is nominated as a candidate for or holds an office described in clause 4 (a);

(b) is an officer or employee of a municipality, county, regional municipality, school board or local board;

(c) is an member of the Assembly as provided in the Legislative Assembly Act; or R.S.O. 1980, c. 235

(d) is a member of the Senate or House of Commons of Canada,

is eligible to be appointed or to remain as a member of the Commission.

Comment: See Recommendations 2 and 5.

(4) The members of the Commission shall elect one of the members appointed under clause (2) (a), (b) or (e) as vice-chair to serve in this position for a term of not more than two years. — Vice-chair

Comment: Compare with s. 2 (2) of the Election Finances Act, 1986.

(5) In the absence of the chair, the vice-chair may act as chair. — Absence of chair

Comment: Compare with s. 2 (3) of the Election Finances Act, 1986.

(6) The Cabinet may, upon such terms as it may prescribe, appoint a temporary substitute member if a member of the Commission is unable to perform the duties of his or her office by reason of absence or incapacity or if the office is vacant. — Substitute members

(7) The Commission shall meet on the call of the chair or of five or more members. — Meetings

Comment: Compare with s. 2 (4) of the Election Finances Act, 1986.

(8) Four or more members of the Commission and the chair or vice-chair constitute a quorum. — Quorum

Comment: Compare with s. 2 (5) of the Election Finances Act, 1986.

(9) The chair of the Commission shall be paid such salary and the other members, except the Chief Election Officer and the chairman of the Commission on Election Finances, shall be paid such daily allowance as may be determined by the Cabinet. — Remuneration of members

Comment: See Recommendation 4. Compare with s. 2 (8) of the Election Finances Act, 1986.

(10) Any member of the Commission, at the end of his or her term of office, may be reappointed for one additional term. — Reappointment

Comment: See Recommendation 3. Compare with s. 2 (7) of the Election Finances Act, 1980.

(11) Notwithstanding subsections (4), (5) and (10), a person who has served two consecutive terms as a member of the Commission is eligible to be appointed to the chair of the Commission, unless he or she had been appointed to serve in that position during those terms. Exception

Comment: See Recommendation 3.

6. The Commission is responsible to the Minister for its operation and shall be assisted by such employees in the public service of Ontario as the Minister may assign for the purpose and may, as required from time to time, obtain the services of a lawyer. Operation of Commission

Comment: See Recommendation 12. Compare with s. 275 (4) of the Education Act.

7.-(1) The Commission, in cooperation with the clerks, shall be responsible for the general administration of the local government electoral process and, without restricting the generality of this responsibility, shall, Powers and duties

(a) assist and advise returning officers and revising officers;

(b) coordinate the training of election officers;

(c) establish guidelines on the recruitment of election staff by the returning officer, revising officer and recount officer;

(d) develop and conduct programs, produce publications, issue guidelines and take any other measures,

(i) to assist election officers in the discharge of their duties,

(ii) to assist the public to become more aware of local government, and

(iii) to assist candidates and newly elected representatives of local government;

(e) where the number of such electors so warrants, cause this Act to be translated into languages other than English and French;

(f) where the number of such electors so warrants, cause voter information and instructions, as well as any other publication relating to the local government electoral process, to be translated into languages other than English and French, and cause this material to be disseminated;

(g) conduct and sponsor research on the local government electoral process;

(h) recommend guidelines to ensure the accessibility of voting places;

(i) establish rules to guide deputy returning officers and recount officers in determining the validity of ballots;

(j) consult and cooperate with whomever the Minister or the Commission considers appropriate on matters of mutual concern that may affect the local government electoral process;

(k) prescribe forms and their contents for use under this Act, which forms and whose contents may be in both the English and French languages, in the English language, in the French language or, where the number of such electors so warrants, in languages other than English and French, and provide for their use; and

(l) cause forms prescribed for use under this Act to be prepared, translated, printed and distributed.

Comment: The following chart shows in which subdivisions of the section the various recommendations appear:

Recommendation	Section
R. 6	s. 7 (1)
R. 6(a)	s. 7 (1)
R. 6(b)	s. 7 (1)(a)
R. 6(c)	s. 7 (1)(b)
R. 6(d)	ss. 7 (1)(d)(i), (g)
R. 6(e)	s. 7 (1)(g)
R. 6(f)	s. 7 (1)(d)(ii)
R. 6(g)	s. 7 (1)(d)(iii)
R. 6(h)	s. 7 (1)(d)
R. 13	ss. 7 (1)(d), (j)
R. 14	s. 7 (1)(c)
R. 15	ss. 7 (1)(g), (j)

R. 18	ss. 7 (1)(g), (j)
R. 19	ss. 7 (1)(g), (j)
R. 24	ss. 7 (1)(d)(ii), (j)
R. 55	s. 7 (1)(g)
R. 56	ss. 7 (1)(h), (j)
R. 58	s. 7 (1)(e)
R. 59	ss. 7 (1)(f), (j)
R. 64	ss. 7 (1)(g), (j)
R. 67	s. 7 (1)(i)
R. 79	ss. 7 (1)(j), (j)
R. 80	ss. 7 (1)(d)(ii), (j)

Comment: Compare with s. 4 (1) of the Election Finances Act, 1986.

Annual reports

(2) The Commission shall report annually upon its affairs to the Minister who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next ensuing session.

Comment: Compare with s. 4 (2) of the Election Finances Act, 1986.

Review of Act and recommendations

(3) The Commission shall, within six months following a general election, conduct a review of this Act and, based on this review, recommend to the Minister any amendments to this Act as, in its opinion, are required, and the Minister shall cause these recommendations to be laid before the Assembly if it is in session or, if not, at the next ensuing session.

Comment: See Recommendation 7. Compare with ss. 4 (1)(f) and (3) of the Election Finances Act, 1985.

Inspection of documents on file with Commission

8.-(1) All documents filed with the Commission under this Act are public records and may be inspected by any person upon request at the office of the Commission during normal office hours.

Comment: Compare with s. 16 (1) of the Election Finances Act, 1986.

Extracts and copies

(2) Any person may make extracts from the documents referred to in subsection (1) and is entitled to copies of the documents upon payment for the preparation of the copies at such rate as the Commission may determine.

Comment: Compare with s. 16 (2) of the Election Finances Act, 1986.

(3) No person, corporation or trade union shall use any of the information contained in any document filed with the Commission for the purpose of commercial solicitation. — Not to be used for commercial solicitation

Local Government Elections Officer

9.-(1) The Cabinet, on the recommendation of the Minister, shall appoint a person, who is an employee of the Ministry of Municipal Affairs, as the Local Government Elections Officer. — Appointment

Comment: See Recommendation 9. Compare with s. 4 (1) of the Election Act, 1984.

(2) The Local Government Elections Officer shall be the secretary of the Commission. — Secretary of the Commission

Comment: See Recommendation 9.

(3) The Local Government Elections Officer, in cooperation with the clerks, shall, in addition to his or her other powers and duties under this Act, — Powers and duties

(a) direct and supervise the administrative conduct of elections; and

(b) issue to the returning officers such instructions as he or she considers necessary in the effective execution of the provisions of this Act.

Comment: See Recommendation 10.

Election Officers

10.-(1) Subject to subsections (2), (3) and (4), the clerk of a municipality is the returning officer and revising officer for elections within the municipality or a part of it. — Returning and revising officer for elections within municipalities

Comment: See Recommendation 11. Compare with s. 3 (1) of the Municipal Elections Act.

(2) For elections of the chairman of a regional municipality, Returning officer in regional chairman elections

(a) the clerk of the area municipality with the greatest number of electors shall be the returning officer for the election;

(b) the nominations for head of council shall be filed with the returning officer for the election who shall cause to be served personally on, or sent by registered mail to, the clerk of each of the other area municipalities, within forty-eight hours after the closing of nominations, the names of the candidates; and

(c) the clerk of each area municipality shall be the returning officer for the vote to be recorded in that area municipality and shall immediately report the vote recorded to the returning officer for the election who shall prepare the final summary and announce the result of the vote.

Comment: Compare with s. 7 (2) of the Regional Municipality of Hamilton-Wentworth Statute Law Amendment Act, 1987, S.O. 1987, c. 12.

(3) For elections of trustees of a police village, the clerk of the municipality in which the police village is located shall be the returning officer for the election and where the police village is located in two or more municipalities, Returning officer in police village elections

(a) the clerk of the municipality having the largest number of electors of the police village shall be the returning officer for the election;

(b) the nominations for trustees shall be filed with the returning officer for the election who shall cause to be served personally on, or sent by registered mail to, the clerk of each of the other municipalities, within forty-eight hours after the closing of nominations, the names of the candidates; and

(c) the clerk of each municipality shall be the returning officer for the vote to be recorded in that municipality and shall immediately report the vote recorded to the returning officer for the election who shall prepare the final summary and announce the result of the vote.

Comment: Compare with s. 3 (2) of the Municipal Elections Act and s. 7 (2) of the Regional Municipality of Hamilton-Wentworth Statute Law Amendment Act, 1987, S.O. 1987, c. 12.

(4) The clerks of municipalities to which subsections 59 (25) and (30) and subsection 113 (21) of the Education Act apply shall perform the duties as returning officers for the purposes of an election under this Act as are specified in those provisions.

Clerks, duties in relation to school board elections

R.S.O. 1980, c. 129

Comment: Compare with s. 3 (3) of the Municipal Elections Act.

(5) Subject to subsections 59 (25), (30) and (31) of the Education Act, the secretary of the divisional board of a school division is the returning and revising officer for elections within the locality or a part of it.

Returning and revising officer for elections within localities

(6) Notwithstanding subsection (5) and subsection 59 (31) of the Education Act, in place of the secretary of the divisional board of a school division, the Local Government Elections Officer, upon the request of the secretary, may designate the clerk of a nearby municipality to be the returning officer and revising officer under subsection (5) and the clerk referred to in subsection 59 (31) of the Education Act.

Substitution

11.-(1) The returning officer shall be responsible for the proper preparation for and conduct of the election and, for this purpose, shall, with the assistance of the Commission, direct the training of any election officers appointed by him or her under this Part and shall supervise their work.

Duty of returning officer

(2) The returning officer may appoint assistant returning officers and election assistants to assist him or her in the performance of his or her duties and may provide for such clerical and other assistance as is necessary for this purpose.

Assistants

Comment: Compare with s. 4 (5) of the Municipal Elections Act.

(3) The returning officer may, in writing, delegate to the assistant returning officers appointed under subsection (2) such of his or her statutory rights and duties in relation to the preparation for and conduct of the election as he or she considers necessary, but such delegation does not preclude the continued exercise of those rights and performance of those duties by the returning officer. — Delegation by returning officer

Comment: Compare with s. 4 (6) of the Municipal Elections Act.

(4) The returning officer may require the assistance of constables and other persons to aid him or her in maintaining peace and order at the election and may appoint for this purpose as many constables as he or she considers necessary. — Assistance of constables

Comment: Compare with s. 68 of the Municipal Elections Act and s. 41 of the Election Act, 1984.

12.-(1) The revising officer shall be responsible for the proper conduct of the revision of the preliminary list of electors prepared for the election and, for this purpose, shall, with the assistance of the Commission, direct the training of any election officers appointed by him or her under this Part and shall supervise their work. — Duty of revising officer

(2) The revising officer may appoint assistant revising officers and revision assistants to assist him or her in the performance of his or her duties and may provide for such clerical and other assistance as is necessary for this purpose. — Assistants

Comment: Compare with s. 4 (5) of the Municipal Elections Act.

(3) The revising officer may, in writing, delegate to the assistant revising officers appointed under subsection (2) such of his or her statutory rights and duties in relation to the revision of the preliminary list as he or she considers necessary, but such delegation does not preclude the continued exercise of those rights and performance of those duties by the revising officer. — Delegation by revising officer

Comment: Compare with s. 4 (6) of the Municipal Elections Act.

(4) Where the number of such electors so warrants, the revising officer may appoint such suitable interpreters as he or she considers necessary to attend at the revision of the preliminary list to assist electors who are deaf or who do not understand or speak the language in which proceedings at the revision are conducted. — Appointment of interpreters

(5) The revising officer may require the assistance of constables and other persons to aid him or her in maintaining peace and order at the revision of the preliminary list and may appoint for this purpose as many constables as he or she considers necessary. — Assistance of constables

Comment: Compare with s. 68 of the Municipal Elections Act and s. 41 of the Election Act, 1984.

13.-(1) The returning officer shall for every election appoint a deputy returning officer and a vote clerk for each voting station established in the municipality or locality and, as far as is practicable, the deputy returning officer and vote clerk shall be appointed for the voting division in which they reside. — D.R.O. and vote clerk

Comment: Compare with s. 4 (1) of the Municipal Elections Act.

(2) The deputy returning officer shall perform such duties as are assigned to him or her under this Act and, in general, shall — Duties of D.R.O.

(a) obey the orders of the returning officer;

(b) ensure that the voting station is properly arranged and has all the necessary supplies and equipment;

(c) maintain peace and order in the voting station;

(d) ensure that the voting is properly conducted;

(e) facilitate the exercise of the right to vote and ensure the secrecy of the vote;

(f) proceed with the counting of the votes when required to do so and in the manner prescribed by this Act; and

(g) deliver or cause to be delivered the results of the vote and the ballot box to the returning officer.

(3) The deputy returning officer may require the assistance of constables and other persons to aid him or her in maintaining peace and order at the voting station and may appoint for this purpose as many constables as he or she considers necessary. Assistance of constables

Comment: Compare with s. 68 of the Municipal Elections Act and s. 41 of the Election Act, 1984.

(4) The vote clerk, in addition to any other duties under this Act, shall, Duties of vote clerk

(a) maintain the record of voters for the voting station;

(b) assist the deputy returning officer in the performance of his or her duties; and

(c) obey the orders of the deputy returning officer.

(5) If a deputy returning officer or vote clerk, Refusal, etc., of D.R.O. or vote clerk

(a) indicates to the returning officer that he or she will not act as such;

(b) does not attend at the opening of the voting station, or

(c) becomes unable, for any reason, to perform his or her duties on voting day,

the returning officer shall appoint another person to act in his or her place.

Comment: Compare with ss. 4 (2), (3) and (4) of the Municipal Elections Act.

(6) The returning officer may for any voting place appoint an information officer and, as far as is practicable, the information officer shall be appointed for the voting division in which he or she resides. Appointment of information officer

(7) Subject to the orders of the returning officer, the information officer shall, Duties of information officer

(a) receive the electors when they enter the voting place and direct them to the voting station where they may exercise their right to vote;

(b) ensure accessibility to the voting place and facilitate movement within the voting place;

(c) ensure that no more electors are admitted to the voting place than the peaceful and orderly conduct of the proceedings there allows;

(d) ensure that only the electors in the voting place at the time fixed for closing the voting stations and who were unable to vote before that time are allowed to exercise their right to vote after that time;

(e) where capable, act as an interpreter to assist electors who do not understand or speak the language in which proceedings at the voting place are conducted;

(f) ensure that only persons authorized to be in the voting place are allowed there; and

(g) inform the returning officer of any situation at the voting place requiring his or her attention.

Assistance to D.R.O., etc., during vote count

(8) For the purpose of counting the ballots in an election, the returning officer may assign any election assistants appointed under subsection 11 (2) or may appoint any additional election assistants to assist the deputy returning officer and vote clerk at a voting station at such times as the returning officer considers necessary.

Comment: See Recommendation 17.

Appointment of interpreters

(9) Where the number of such electors so warrants, the returning officer may appoint such suitable interpreters as he or she considers necessary to attend at a voting place to assist electors who are deaf or who do not understand or speak the language in which proceedings at the station are conducted.

Comment: See Recommendation 61.

Information officer as interpreter

(10) Subsection (9) does not preclude an information officer appointed under subsection (6) from acting as an interpreter or from being appointed an interpreter under subsection (9).

Matters to be considered when appointments made

14.-(1) The returning officer and revising officer, when making appointments of election officers under this Part, shall take into account the needs of the different linguistic and cultural groups found in the municipality or locality and, where desirable and possible, shall appoint members of these groups as election officers to serve where the officer considers the needs of those groups would be best met.

Comment: See Recommendation 62.

Candidate, etc., not to be appointed

(2) No person shall be appointed an election officer under this Part who is a candidate, a scrutineer or other person who is working for a candidate in his or her campaign for election or who is working for a campaign to support or oppose a by-law or to support or oppose the affirmative or negative position on a question required or authorized by law to be submitted to the electors for their assent or opinion.

Comment: Compare with ss. 4 (1) and (5) of the Municipal Elections Act.

Age of persons appointed

(3) No person shall be appointed an election officer under this Part who is under the age of eighteen years.

Comment: Compare with s. 4 (10) of the Municipal Elections Act.

Oath of returning officer and others

15.-(1) Every returning officer, revising officer, deputy returning officer, vote clerk, assistant returning officer, assistant revising officer, election assistant, revision assistant, information officer, interpreter, constable, scrutineer and other person authorized to attend and serve at a voting station shall, before starting his or her duties, take an oath in the prescribed form.

Comment: Compare with s. 4 (8) of the Municipal Elections Act.

Oath of D.R.O.

(2) The oath of the deputy returning officer under subsection (1) shall be endorsed upon or attached to the record of voters maintained by the vote clerk for the voting station for which he or she is appointed.

Comment: Compare with s. 4 (9) of the Municipal Elections Act.

16. Where the number of such electors so warrants, the council of a municipality may by by-law establish an advisory committee consisting of persons of different linguistic and cultural backgrounds to assist the returning officer and his

or her staff in the dissemination of information on the local government electoral process.

Comment: See Recommendation 60.

Oaths

Who may administer oaths

17.-(1) Except where otherwise provided, an oath may be administered by any person authorized by law to administer oaths in Ontario.

Comment: Compare with s. 5 (1) of the Municipal Elections Act.

Who may administer oaths

(2) Except as otherwise provided in Part VII, the returning officer and the revising officer may administer any oath required by this Act, and deputy returning officers, vote clerks, assistant returning officers and assistant revising officers may administer any such oath other than an oath to be taken by the returning officer or by the revising officer.

Comment: Compare with s. 5 (2) of the Municipal Elections Act.

No charge

(3) A person who administers an oath under this Act shall not charge a fee for this service.

Comment: Compare with s. 5 (3) of the Municipal Elections Act.

Employees Serving at an Election

Leave to be granted to employee to serve

18.-(1) Every employer shall, on a request made not later than seven days before the time required, grant a leave of absence to any employee who has been appointed by the returning officer as an election officer to enable him or her to perform his or her duties, and the employer may not dismiss an employee who has been so appointed.

Comment: Compare with s. 6 (1) of the Election Act, 1984.

Remuneration

(2) The employer is not required to pay an employee for any leave granted under subsection (1), but such leave shall not be subtracted from any vacation entitlement.

Comment: Compare with s. 6 (2) of the Election Act, 1984.

Scrutineers

Appointment of scrutineer by candidate

19.-(1) A candidate may appoint in writing any person to be a scrutineer to represent the candidate in a voting station and at the counting of votes by the deputy returning officer for the station.

Comment: Compare with s. 6 (1) of the Municipal Elections Act and s. 32 (1) of the Election Act, 1984.

Limit on number of scrutineers

(2) Only one scrutineer for each candidate may represent the candidate in a voting station at any one time.

Comment: Compare with s. 6 (2) of the Municipal Elections Act and s. 32 (3) of the Election Act, 1984.

Right of candidate to undertake duties of scrutineer

(3) A candidate may undertake any of the duties that his or her scrutineer might have undertaken if appointed, or may assist his or her scrutineer in the performance of these duties, and may be present at any place at which his or her scrutineer may attend under this Act.

Comment: Compare with s. 26 (6) of the Election Act, 1984.

Scrutineers appointed by council or school board

(4) Subject to subsection (5), where a by-law or question is submitted by the council of a municipality or by a school board, as the case may be, to the electors at an election, the council or board, if requested to do so, may by resolution appoint as scrutineers,

(a) two persons to attend at each voting station, and

(b) two persons to attend the official addition of the votes by the returning officer.

The same

(5) The council or board, when appointing persons as scrutineers under clauses (4)(a) and (4)(b), shall ensure in each case that one of them represents supporters of the by-law or of the affirmative position on the question and the other represents opponents of the by-law or supporters of the negative position on the question.

Comment: Compare with s. 6 (3) of the Municipal Elections Act.

Age of persons appointed

(6) No person shall be appointed as a scrutineer under this section who is under the age of eighteen years.

Comment: Compare with s. 6 (1) of the Municipal Elections Act and s. 32 (1) of the Election Act, 1984.

Duties of scrutineer

20. A person appointed as a scrutineer under section 19, before being admitted to a voting station, shall, if so requested, show proof of his or her appointment to the deputy returning officer for the voting station and, while present in the voting station, shall represent the interests of the candidate or the supporters or opponents of the by-law or question, as the case may be, faithfully and fairly and, without restricting the generality of the foregoing, shall,

(a) observe the proceedings in the voting station;

(b) record and report any irregularities occurring during those proceedings;

(c) not interfere with the actual taking of the vote except to challenge the right to vote of any elector when he or she has good reason to believe the elector is not entitled to vote or except where otherwise permitted by this Act to do so; and

(d) not interfere with or in any way participate in the actual counting of the votes except where he or she has good reason for objecting to the counting of a ballot or to the counting of any votes in a ballot or except where otherwise permitted by this Act to do so.

Comment: Compare with s. 7 of the Municipal Elections Act.

Costs of Election

Cost of election

21.-(1) Except where otherwise specifically provided by this or any other Act, the cost of an election shall be borne by the municipality in which it is held and all costs shall be paid on certification of the returning officer.

Comment: Compare with s. 8 (1) of the Municipal Elections Act.

Expenses of officers

(2) The reasonable expenses incurred by a returning officer or any other election officer in the preparation for and conduct of an election and all reasonable fees and allowances for services rendered under this Act or otherwise on account of an election shall be paid by the treasurer of the municipality to the persons entitled to them.

Comment: Compare with s. 8 (2) of the Municipal Elections Act.

(3) Where the returning officer is required to conduct a by-election for the office of member or members of a school board or of a local board, the board shall immediately reimburse the treasurer of the municipality for the cost of employing any election officer and for the reasonable expenses incurred by the returning officer or any other election officer in the preparation for and conduct of the by-election, including the cost of printing and distributing but not otherwise preparing the voters' list. — Expenses of by-election of school board, etc.

Comment: Compare with s. 8 (3) of the Municipal Elections Act.

Term of Office

22.-(1) Notwithstanding any other Act, the term of office of all offices subject to election under this Act shall be three years, commencing no later than the third Monday of November in an election year. — Three-year term

Comment: See Recommendation 51. Compare with s. 9 (1) of the Municipal Elections Act.

(2) Subject to subsection 64 (6), the incumbents of offices hold office until their successors are elected and have taken office. — Until successors take office

Comment: Compare with s. 9 (2) of the Municipal Elections Act.

Triennial Elections

23.-(1) A general election for all the offices described in clause 4 (a) shall be held in each municipality every third year starting in 1988. — Election year

Comment: Compare with s. 10 of the Municipal Elections Act.

(2) Where a by-law requires the assent of the electors or a question is authorized or required to be submitted to obtain the opinion of the electors, the vote shall be taken at the next general election unless, — Vote on by-law or questions

(a) the Ontario Municipal Board orders otherwise;

(b) the question is under the Fluoridation Act and the council of the municipality decides to submit it before the next election; or — R.S.O. 1980, c. 171

(c) the question is under the Liquor Licence Act and the Liquor Licence Board approves the taking of the vote on some other day. R.S.O. 1980, c. 244

Comment: Compare with s. 10 (2) of the Municipal Elections Act.

Voting Day

24. Subject to section 158 of the Public Health Act, voting day in a general election shall be the third Tuesday in October in each election year. Voting day

R.S.O. 1980, c. 409

Comment: See Recommendation 50. Compare with s. 11 (1) of the Municipal Elections Act.

Voting Divisions

25. The returning officer shall divide or, when necessary for the purpose of section 26, redivide the municipality or locality, as the case may be, into voting divisions and, to enable the assessment commissioner to prepare the enumeration list required under section 34, the returning officer shall inform the assessment commissioner of the boundaries of each division no later than the 15th day of January in an election year. Voting divisions

Comment: See Recommendation 16. Compare with s. 17 of the Municipal Elections Act.

26. A voting division shall not, so far as is practicable, Size

(a) contain more than 350 electors; or

(b) extend beyond the boundaries of one ward or of an electoral district established for the election of members to the Assembly.

Comment: Compare with s. 18 of the Municipal Elections Act.

Voting Places and Voting Stations

27.-(1) The council of a municipality may by by-law establish an advisory committee to assist the returning officer in the identification and location of voting places that are accessible to persons who are elderly or who have a physical disability or a mobility impairment. Advisory committee on voting places

Comment: See Recommendation 57.

(2) Subject to subsection (8) and to section 28, the returning officer, with the assistance of the advisory committee , if any, established under subsection (1), shall in each election arrange for at least one voting place for each voting division in the most central or most convenient place for the electors, furnished with light and heat and such other accommodation and furniture as may be required, and, if the returning officer considers it necessary, the voting place may be provided outside the limits of the voting division. Voting places

Comment: Compare with s. 46 (1) of the Municipal Elections Act and s. 13 (1) of the Election Act, 1984.

(3) Every voting place for an election in a municipality or locality shall be situated in the municipality or locality, except that, where a voting division in a township adjoins an urban municipality, the voting place for the voting division may be within the limits of the urban municipality. The same

Comment: Compare with s. 46 (2) of the Municipal Elections Act.

(4) The returning officer may unite two or more adjoining voting divisions and provide one voting place for the united divisions. United divisions

Comment: Compare with s. 46 (4) of the Municipal Elections Act and s. 13 (2) of the Election Act, 1984.

(5) The voting place may be located in any public building or on private property and shall, so far as is reasonably possible, allow easy access to persons who are elderly or who have a physical disability or a mobility impairment. Location of voting places

Comment: See Recommendation 54. Compare with s. 13 (3) of the Election Act, 1984.

(6) Where, in the opinion of the returning officer, it is necessary to ensure to the maximum number of electors access to conveniently located voting places, When landlord, etc. to furnish facilities

(a) a landlord of a building containing 100 or more dwelling units;

(b) a school board;

(c) a local board;

(d) a municipally funded institution; or

(e) a provincially funded institution,

shall, on the request of the returning officer made not less than fourteen days prior to voting day, make any premises under his, her or its control available as a voting location at no cost to the municipality or locality.

Comment: Compare with s. 13 (4) of the Election Act, 1984.

Voting stations

(7) Every voting place established under this section shall have at least one voting station.

Comment: Compare with s. 13 (5) of the Election Act, 1984.

Additional voting places or stations

(8) The returning officer may provide such additional voting places in any voting division, or such additional voting stations in any voting place, as are required, having regard to,

(a) the extent of the division;

(b) the remoteness of any number of the electors from the voting place; and

(c) the number of electors who may conveniently vote at one voting place or station, as the case may be.

Comment: Compare with s. 46 (5) of the Municipal Elections Act and s. 13 (6) of the Election Act, 1984.

Designation of station

(9) Where there are two or more voting stations in a voting division, each voting station shall be designated by the initial letters of the surnames of the electors who are qualified to vote in the station, that is to say, A to M and N to Z, or as the case may be, and an elector is entitled to vote only at the voting station designated for him or her.

Comment: Compare with s. 46 (6) of the Municipal Elections Act and s. 13 (6) of the Election Act, 1984.

Voting places in hospitals, etc.

28.-(1) Where,

(a) an institution for the reception, treatment or vocational training of persons who have served or are serving in the Canadian Forces or who have a disability,

(b) a hospital,

(c) a psychiatric facility,

(d) a home for the aged,

(e) a nursing home or other institution of twenty beds or more, in which chronically ill or infirm persons reside, or

(f) a retirement home of fifty beds or more,

is situated in a municipality or locality, a voting place shall be provided in such institution or upon the premises.

Comment: Compare with s. 47 (1) of the Municipal Elections Act and s. 14 (1) of the Election Act, 1984.

Voting

(2) Electors who are resident at an institution referred to in subsection (1) and who are entered in the voters' list may vote at a voting station established in the institution.

Comment: Compare with s. 14 (2) of the Election Act, 1984.

The same

(3) Where an elector resident at an institution is unable to attend a voting station established there, the deputy returning officer and vote clerk shall visit the elector to receive his or her ballot.

Comment: Compare with s. 47 (2) of the Municipal Elections Act and s. 14 (2) of the Election Act, 1984.

Continuation of vote

(4) On the completion of their canvass of the residents, the election officers may continue the vote in one accessible and convenient location within the voting place until the close of the vote.

Comment: Compare with s. 14 (3) of the Election Act, 1984.

(5) Each candidate and one of his or her scrutineers, and any scrutineer appointed by the council or a school board in relation to any by-law or question, may be present at a voting station in the institution except where a ballot is marked under section 88. Presence of candidate and scrutineer

Comment: Compare with s. 47 (2) of the Municipal Elections Act and s. 14 (4) of the Election Act, 1984.

(6) Except as otherwise provided in this section, the provisions of this Act relating to advance votes, procedure on voting day, counting of the votes and the reporting of the results of the vote apply with necessary modification to voting under this section. Application

Comment: Compare with s. 46 (6) of the Election Act, 1984.

PART II

ELECTORS

Qualification

Qualification of electors

29.-(1) A person is eligible to be an elector in a municipality or a school board jurisdiction and is entitled to vote in an election there, if he or she,

(a) on or before voting day,

(i) is a Canadian citizen, and

(ii) has attained eighteen years of age;

(b) during the period beginning on the 16th day of September and ending on voting day in an election year,

(i) in the case of a resident elector, has continuously resided in the municipality or the school board jurisdiction, or

(ii) in the case of a non-resident elector, has continuously been the owner or tenant of land in the municipality or the school board jurisdiction, or the spouse of such owner or tenant; and

(c) is not disqualified under this or any other Act or otherwise prohibited by law from voting in the election.

Comment: See Recommendation 26. Compare with s. 12 of the Municipal Elections Act and s. 15 (1) of the Election Act, 1984.

Evidence of citizenship

(2) For the purpose of this section, a statutory declaration by a person claiming that he or she is a Canadian citizen is proof of that fact until the contrary is proven.

Comment: Compare with s. 15 of the Municipal Elections Act and s. 15 (4) of the Election Act, 1984.

(3) A person is eligible to vote in an election for the office of member of the council of a regional municipality if he or she is eligible to be an elector under subsection (1) for the election of members of the council of an area municipality situated in the regional municipality. — Entitlement to vote in regional council elections

(4) A person is eligible to vote in an election for the office of trustee of a police village if he or she is eligible to be an elector under subsection (1) for the election of members of the council of the municipality in which the village is situated, in whole or in part, by reason of being a resident or owner or tenant of land situated in the village or the spouse of such owner or tenant. — Entitlement to vote in police village elections

Comment: See Recommendation 1. Compare with s. 332 (1) of the Municipal Act.

(5) A person, — Entitlement of public school electors to vote

(a) who is an elector under subsection (1), and

(b) who is a public school elector,

is entitled to vote in an election for the office of,

(c) member of a public school board, or

(d) member of a school board, which member is required by the Education Act or any other Act to be elected by public school electors, — R.S.O. 1980, c. 129

as the case may be, in the area within the jurisdiction of the board where he or she is an elector.

Comment: See Recommendation 1. Compare with s. 196 of the Education Act.

(6) A person, — Entitlement of Roman Catholic separate school electors to vote

(a) who is an elector under subsection (1), and

(b) who is a Roman Catholic separate school elector,

is entitled to vote in an election for the office of,

(c) member of a Roman Catholic separate school board, or

(d) member of a school board, which member is required by the Education Act or any other Act to be elected by Roman Catholic separate school electors,

as the case may be, in the area within the jurisdiction of the board where he or she is an elector.

Comment: See Recommendation 1. Compare with s. 196 of the Education Act.

Entitlement of Protestant separate school electors to vote

(7) A person,

(a) who is an elector under subsection (1), and

(b) who is a Protestant separate school elector,

is entitled to vote in an election for the office of member of a Protestant separate school board in the area within the jurisdiction of the board where he or she is an elector.

Comment: See Recommendation 1. Compare with s. 143 of the Education Act.

Entitlement of linguistic school electors to vote

(8) A person,

(a) who is an elector under subsection (1),

(b) who is a Roman Catholic separate school elector or a Protestant separate school elector or a public school elector, and

(c) who has chosen to vote to elect members of the French-language section, or of the English-language section, of a board under Part XI-A of the Education Act,

is entitled to vote in an election for the office of member of that section of the board in the area within the jurisdiction of the board where he or she is an elector.

Comment: See Recommendation 1. Compare with ss. 277h and 2771 of the Education Act.

Only persons in list entitled to vote

(9) Except as provided in sections 47, 73 and 79, no person is entitled to vote at an election unless his or her name appears in the voters' list certified under section 46 for the voting division in which he or she casts his or her vote.

Comment: Compare with s. 32 of the Municipal Elections Act and s. 15 (5) of the Election Act, 1984.

(10) If the name of a person entitled to vote is entered on the voters' list for more than one voting division, he or she shall nevertheless vote only at one voting station. — Person to vote in one division only

Comment: Compare with s. 43 of the Election Act, 1984.

30. Every person entitled to be an elector in a municipality is entitled to be an elector to vote on a money by-law submitted for the assent of the electors of the municipality. — Who may vote on money by-laws

Comment: Compare with s. 16 of the Municipal Elections Act.

Disqualification

31. Every person who is an inmate in a penal or correctional institution under sentence of imprisonment is disqualified from voting. — Disqualification of inmate in institution

Comment: Compare with s. 14 of the Municipal Elections Act.

32. Every person who is convicted of bribery under this Act is disqualified from voting at any election for six years from the date of conviction. — Disqualification of persons convicted of bribery

Comment: Compare with s. 103 (1) of the Municipal Elections Act.

Proxies

33.-(1) Any elector whose name appears in the voter's list for a voting division or who has obtained a certificate under section 47 and who has reason to believe that he or she will be unable to vote at the advance vote or on voting day in an election may appoint, using the prescribed form, some other elector in the municipality or locality as his or her proxy voter to vote for him or her at the election. — Appointment of proxy

Comment: See Recommendation 53. Compare with s. 67 (1) of the Municipal Elections Act and s. 17 (1) of the Election Act, 1984.

(2) No appointment of a proxy voter is valid unless it is made after nomination day and expires after voting day. — Term of appointment

Comment: Compare with s. 67 (4) of the Municipal Elections Act and s. 17 (2) of the Election Act, 1984.

(3) An elector may not act as proxy voter for more than one elector, unless the elector for whom he or she is acting as proxy voter is his or her parent, grandparent, child, grandchild, sibling or spouse in which case he or she may act for any of those persons. — Limitation

Comment: See Recommendation 53. Compare with s. 67 (3) of the Municipal Elections Act and s. 17 (3) of the Election Act, 1984.

(4) Subject to subsection (13), not more than one proxy voter shall be appointed for any elector at an election. — The same

Comment: Compare with s. 67 (7) of the Municipal Elections Act and s. 17 (9) of the Election Act, 1984.

(5) A person appointed as proxy voter may apply to the returning officer not later than 5 o'clock in the afternoon of voting day to receive a certificate to vote by proxy in the voting division in which the person appointing him or her is entitled to vote. — Application for certificate to vote by proxy

Comment: Compare with s. 67 (5) of the Municipal Elections Act and s. 17 (4) of the Election Act, 1984.

(6) The returning officer may take evidence on oath as to the right of the person appointing the proxy voter to vote in the voting division upon the list for which his or her name is entered and as to the qualification of the proxy voter; and, if the returning officer is satisfied that the person appointing the proxy voter is properly qualified and that the proxy voter is authorized to act for the person appointing him or her, the returning officer shall give a certificate in prescribed form confirming the appointment of the proxy voter. — When certificate to be given

Comment: Compare with s. 67 (6) of the Municipal Elections Act and s. 17 (5) of the Election Act, 1984.

(7) A ballot shall not be delivered to a person who claims to vote as a proxy voter unless he or she produces to the deputy returning officer his or her appointment as a proxy voter and the proxy certificate given by the returning officer under subsection (6) and takes the prescribed oath. — Oath on voting

Comment: Compare with s. 67 (8) of the Municipal Elections Act and s. 17 (6) of the Election Act, 1984.

(8) Where a proxy voter has voted, the deputy returning officer shall file the appointment of the proxy voter and the proxy certificate given by the returning officer with the election papers and return them to the returning officer in the envelope provided for that purpose. — Record of proxy voting

Comment: Compare with s. 67 (9) of the Municipal Elections Act.

(9) An elector who has been appointed as a proxy voter is entitled to vote in his or her own right in his or her own voting division and, if within the same voting division, may apply to the returning officer to have his or her name transferred to the voters' list of the voting station where the proxy vote is to be cast or to have the name of the person appointing the proxy voter transferred to the voters' list of his or her voting station. — Proxy voter may vote in own right, etc.

Comment: Compare with s. 17 (7) of the Election Act, 1984.

(10) No elector who has been appointed as a proxy voter is entitled to have his or her name, or that of the person appointing him or her, transferred under subsection (9) to the voters' list of the voting station at which the other person is entitled to vote unless the ballot or ballots to be used at both voting stations contain the same list of offices subject to election and the same list of candidates for those offices. — Restriction

(11) An elector who has appointed a proxy voter may cancel such appointment by returning the proxy certificate to the returning officer for cancellation or by notifying the returning officer and the proxy voter in writing of such cancellation. — Cancellation of appointment

Comment: Compare with s. 17 (8) of the Election Act, 1984.

(12) An elector who has been appointed a proxy voter may cancel such appointment by returning the proxy certificate to the returning officer for cancellation or by notifying the returning officer and the elector who appointed him or her in writing of such cancellation. — The same

(13) The cancellation of a proxy certificate under subsection (11) or (12) does not preclude the appointment of another proxy voter under this section. — Another appointment after cancellation

Preparation of Enumeration List

Preparation of list

34.-(1) An assessment commissioner shall, during the period beginning on the 15th day of May and ending on the 30th day of June in an election year, from an enumeration taken under the Assessment Act during that period, compile for each voting division in each municipality and locality in his or her assessment region a list containing the name and address of each person who meets the qualifications for an elector under subsection 29 (1).

R.S.O. 1980, c. 31

Comment: Compare with s. 19 of the Municipal Elections Act.

Designation of electors

(2) The enumeration list compiled under subsection (1) shall indicate opposite the name of an elector,

(a) who does not reside in the municipality or locality, that the elector does not so reside;

(b) who is an owner or tenant of land in the municipality or locality, that the elector is such an owner or tenant.

(c) who is enumerated as a Roman Catholic separate school supporter, that the elector is a Roman Catholic separate school elector;

(d) who is a Roman Catholic and the spouse of a Roman Catholic separate school supporter, that such spouse is a Roman Catholic separate school elector;

(e) who is enumerated as a Protestant separate school supporter, that the elector is a Protestant separate school elector;

(f) who is a Protestant and the spouse of a Protestant separate school supporter, that such spouse is a Protestant separate school supporter.

(g) who is a Roman Catholic separate school elector or a Protestant separate school elector or a public school elector, that the elector has chosen to vote to elect members of the French-language section, or of the English-language section, of a board under Part XI-A of the Education Act.

R.S.O. 1980, c. 129

Comment: Compare with s. 19 (1) of the Municipal Elections Act.

35.-(1) In a municipality that is not divided into wards or a locality, the name of an elector shall be entered on the enumeration list, — For voting division where no wards

(a) for the voting division in which the elector resides; or

(b) if the elector does not reside in the municipality or locality, for the voting division in which the elector or his or her spouse is the owner or tenant of land.

Comment: Compare with s. 20 (1) of the Municipal Elections Act.

(2) The name of an elector shall not be entered under this section on the enumeration list for more than one voting division. — For one voting division only

Comment: Compare with s. 20 (2) of the Municipal Elections Act.

36.-(1) In a municipality that is divided into wards, the name of an elector shall be entered on the enumeration list, — For voting division where wards

(a) where the elector resides in the municipality, for the voting division in which the elector resides; or

(b) where the elector does not reside in the municipality, for a voting division of a ward in which the elector or his or her spouse is the owner or tenant of land.

Comment: Compare with s. 21 (1) of the Municipal Elections Act.

(2) The name of an elector shall not be entered under this section on the enumeration list for more than one voting division. — For one voting division only

Comment: Compare with s. 21 (2) of the Municipal Elections Act.

37.-(1) The assessment commissioner shall deliver the enumeration list prepared by him or her under sections 34, 35 and 36 to the returning officer on or before the 15th day of July in an election year. — List delivered to returning officer

Comment: See Recommendation 20. Compare with s. 22 of the Municipal Elections Act.

The same

(2) At the written request of the returning officer the assessment commissioner may deliver the enumeration list referred to in subsection (1) in a format that will facilitate the use of mechanical or electronic means in the printing or reproduction of the list required under section 39.

Correction of list

38. Where the returning officer finds that, upon inspection,

(a) all or part of the list delivered to him under section 37 does not conform with the requirements for the voting divisions; or

(b) the list contains obvious errors,

the returning officer may, as the case may be, prior to the printing or reproduction of the list required under section 39, correct all or part of the list and, if he or she does, shall immediately notify the assessment commissioner of the corrections, or, if the errors are extensive, request the assessment commissioner to make the necessary corrections.

Comment: Compare with s. 23 of the Municipal Elections Act.

Preliminary List of Electors

Printing of list etc.

39.-(1) Immediately after receiving the list delivered by the assessment commissioner under section 37, the returning officer, after the corrections, if any, are made under section 38, shall,

(a) cause the list to be printed or reproduced and this list shall be the preliminary list of electors;

(b) establish the places where and fix the times when revision of the list will be undertaken;

(c) post notice of,

(i) the date of the posting of the list,

(ii) the period during which application for revision of the list may be filed, and

(iii) the places where and the times when revision of the list will be undertaken,

in at least two conspicuous public places in the municipality or locality, and where there is a newspaper having general circulation in the municipality or locality, publish the notice in that newspaper.

Comment: Compare with s. 24 of the Municipal Elections Act.

Time of notice

(2) The notice referred to under clause (1)(c) shall be given no later than seven days before the commencement of the revision period.

Comment: Compare with s. 25 (2) of the Municipal Elections Act.

Posting list

(3) Immediately after the printing or reproduction of the preliminary list, the returning officer shall post one copy of the list in a conspicuous place in his or her office and in at least two other conspicuous public places in the municipality or locality.

Comment: Compare with s. 25 (1) of the Municipal Elections Act.

Day of posting

(4) The day of posting copies of the preliminary list under subsection (3) shall be no later than the first day of the revision period.

Comment: Compare with s. 25 (2) of the Municipal Elections Act.

Notice attached to list

(5) The returning officer shall attach to the outside or cover of each copy of the preliminary list of electors for an election a notice in the prescribed form, over his or her name,

(a) stating that the list is a preliminary list of all electors for the election or is a preliminary list of all electors for the voting division, as the case may be, prepared as required by this Act;

(b) stating the date on which the list was posted in the office of the returning officer;

(c) giving notice to all electors to examine the list for the purposes of making additions or corrections to or deletions from the list; and

(d) stating the last day for filing applications concerning such inclusions, additions, corrections or deletions.

Comment: Compare with s. 25 (4) of the Municipal Elections Act.

Copies of list

(6) At the time of posting a notice under subsection (3), the returning officer shall deliver or mail one copy of the preliminary list to,

(a) the assessment commissioner;

(b) the secretary of every school board and every local board the members of which are required to be elected at an election to be conducted by the returning officer;

(c) the clerk of the council of the county or regional municipality in which the municipality is situated; and

(d) the returning officer of the municipality responsible for conducting the elections in any combined school board area.

Comment: Compare with s. 25 (5) of the Municipal Elections Act.

Candidates entitled to copies

(7) Every candidate for any office in an election is entitled to be furnished by the returning officer with two copies of the preliminary list of electors entitled to vote in an election to that office.

Comment: Compare with s. 25 (6) of the Municipal Elections Act.

Copies of list to others

(8) The returning officer shall provide a copy of the preliminary list to any person who requests it and who pays the fee ordinarily charged for the preparation of copies of documents in the office of the returning officer.

Revision of Preliminary List of Electors

Revision period

40. The revision of the preliminary list of electors shall take place during the period beginning on the 15th day of August and ending on the 15th day of September in an election year.

Comment: See Recommendation 20. Compare with ss. 25 (2) and (3) of the Municipal Elections Act.

41.-(1) The revising officer shall revise the preliminary list and shall continue to do so from day to day as required until all applications filed on or before the last day for filing applications for revision of the list have been disposed of. — Revision of list

Comment: Compare with s. 26 (1) of the Municipal Elections Act.

(2) The revising officer may proceed to consider such applications for revision as from time to time may be received and may determine and dispose of them on or before the last day fixed for revision of the preliminary list under section 33. — When applications may be considered

Comment: Compare with s. 26 (2) of the Municipal Elections Act.

42.-(1) A person, — Application to revise list

(a) whose name has not been included in the preliminary list for a voting division in a municipality or locality;

(b) whose name has been included in the list but the information relating to him or her set out in it is incorrect; or

(c) whose name has been included in the list as a non-resident and who is qualified to be an elector in more than one ward in the municipality,

may apply to the revising officer during the period provided for the revision of the list to have,

(d) his or her name included on the list;

(e) any information relating to him or her set out in the list corrected, including having his or her name deleted from any list where it is incorrectly included; or

(f) his or her name deleted from the list of one ward and instead entered on the list of another ward in which he or she or his or her spouse is the owner or tenant of land.

Comment: Compare with s. 27 (1) of the Municipal Elections Act.

Application and declaration

(2) Every person applying under this section shall sign an application in the prescribed form in which all the information shall be completed, either by the applicant personally or by the revising officer at the applicant's request, and shall declare that he or she understands the effect of the statements in the application and that he or she is an elector entitled to have his or her name included on the list or to have the list corrected as requested, before the revising officer enters his or her name on the list or corrects the list, as the case may be.

Comment: Compare with s. 27 (2) of the Municipal Elections Act.

Application filed personally or by agent

(3) An application made under this section and properly signed by the applicant may be filed by the applicant or by a person on behalf of the applicant.

Comment: Compare with s. 27 (3) of the Municipal Elections Act.

Interpreter where necessary

(4) Subject to subsection 12 (4) and subsections (5) and (6), where the revising officer does not understand the language spoken by an applicant or where the applicant is deaf, the applicant has the right to the assistance of an interpreter who, after taking the prescribed oath, may translate any necessary declarations, documents or lawful questions put to the applicant and the answers, but, if an interpreter is not immediately available, the application shall be postponed until an interpreter does become available.

Comment: Compare with s. 27 (4) of the Municipal Elections Act and s. 21 (8) of the Election Act, 1984.

Providing interpreter

(5) The applicant may provide his or her own interpreter, but, if the applicant is not able to do so, the revising officer, where possible, shall arrange, at the expense of the municipality or locality, that an interpreter be provided.

(6) Where the applicant and the revising officer, after making reasonable efforts, have not been able to find a suitable interpreter, the application under subsection (1) shall be refused. — Refusal of application

(7) Where the revising officer determines that an applicant under this section understands the effect of the statements in the application and that the applicant is an elector whose name should be included on the list or that the amendment of the list that the applicant requests should be made, the revising officer shall approve this change by signing the application. — Decision to amend list

Comment: Compare with s. 27 (5) of the Municipal Elections Act.

(8) Where the revising officer determines that the statements made by an applicant in his or her application under this section do not show that the applicant is an elector entitled to have his name included in the list or to have the list amended as requested, the revising officer shall inform the applicant that the application is refused, stating the reasons for the refusal, which reasons shall be endorsed on the application.

43.-(1) During the period provided for the revision of the preliminary list for a municipality or locality, any person may file with the revising officer an application, in the prescribed form, for deletion from the list of the name of a person who is not entitled as an elector to have his or her name entered on the list. — Application for deletion of name

Comment: Compare with s. 28 (1) of the Municipal Elections Act.

(2) The revising officer, upon receipt of an application under this section, shall immediately cause to be served personally on, or sent by registered mail to, the person concerning whom the application is made at the address given in the preliminary list and at such other address, if any, as may be mentioned in the application, a notice of hearing requiring this person to appear in person or by his or her representative on a day and at a time to be fixed in the notice. — Notice to person where name objected to

Comment: Compare with s. 28 (2) of the Municipal Elections Act.

When hearing to be held

(3) The day for the hearing to be fixed in the notice given under subsection (2) shall be not later than ten days after the application is filed with the revising officer under subsection (1).

Copy of application to be served

(4) A copy of the application shall accompany a notice served or sent under subsection (2).

Comment: Compare with s. 28 (3) of the Municipal Elections Act.

Notice to applicant

(5) The revising officer shall notify the applicant of the time and place of the hearing.

Comment: Compare with s. 28 (4) of the Municipal Elections Act.

Decision of revising officer, etc.

(6) On the day and at the time for the hearing fixed in the notice given under subsection (1), the applicant shall attend before the revising officer to establish the grounds for the deletion of the name and the revising officer, after reviewing an explanation of the facts alleged by the applicant and after hearing the response of the person concerning whom the application was made or his or her representative, may delete the name from the preliminary list if he or she is satisfied that the name should not have been included on the list.

Comment: Compare with s. 28 (5) of the Municipal Elections Act and s. 21 (5) of the Election Act, 1984.

Where person objected to does not appear

(7) Where a person concerning whom an application has been made under this section or his or her representative does not attend the hearing before the revising officer and the revising officer is satisfied that proper notice of the application has been given to the person or that he or she could not be found and the registered notice could not be delivered, or this person has filed a notice in writing of his or her decision not to attend the hearing, the revising officer may delete the name of the person from the preliminary list of electors but shall not do so except upon evidence under oath which satisfies him or her that the name should not have been included on the list.

Comment: Compare with s. 28 (6) of the Municipal Elections Act.

(8) Where, under this section, for any reason the name of a person is deleted from a preliminary list, the revising officer shall immediately cause to be served personally on, or sent by registered mail to, that person at the address given in the preliminary list a notice indicating the reasons why the person's name was deleted from the preliminary list and advising him or her of the voting procedures under sections 47 and 79, but if the revising officer is satisfied that the person cannot be found at the address in the preliminary list, or that the notice cannot be delivered to the person, no notice need be given. — Where name deleted from preliminary list

Comment: Compare with s. 28 (7) of the Municipal Elections Act.

44. Subject to section 47 or 79, the decision of the revising officer to enter or delete the name of a person as an elector on or from the preliminary list is final for the purposes of this Act. — Decision final

Comment: Compare with s. 29 of the Municipal Elections Act.

45.-(1) Upon the determination of all applications for revision of the preliminary list for a municipality or locality filed during the period provided for revision of the list, the revising officer shall compile a statement of inclusions in, additions and changes to and deletions from the list, bearing the full name and address of each person who is the subject of the inclusion, addition, change or deletion, and shall send a certified copy of this statement to each person specified in subsection 39 (6) and shall furnish two certified copies of this statement to every candidate for any office. — Statement of change

Comment: See Recommendation 23. Compare with s. 30 of the Municipal Elections Act.

(2) The revising officer shall provide a copy of the statement compiled under subsection (1) to any person who requests it and who pays the fee ordinarily charged for the preparation of copies of documents in the office of the revising officer. — Copies of statement to others

Voters' List

46. After compiling the statement of additions, changes and deletions required under section 45, the revising officer shall prepare the voters' list for each voting division in his or her municipality or locality by making the appropriate — Voters' list

changes in the preliminary list in accordance with the statement and shall certify the list as so revised.

Comment: Compare with s. 31 of the Municipal Elections Act.

Entry of name on list by D.R.O.

47.-(1) If a person whose name is omitted from a voters' list certified under section 46, at any time after preparation of the voters' list and prior to the closing of the voting stations on voting day, satisfies the returning officer on oath that he or she was entitled to be an elector under subsection 29 (1) and to have his or her name entered on the preliminary list for the municipality or locality, the returning officer may issue a certificate, in duplicate, in the prescribed form authorizing the deputy returning officer for the proper voting division to enter the name of the elector on the voters' list for the division and to permit this person to vote.

Comment: Compare with s. 33 (1) of the Municipal Elections Act.

The same

(2) Where the name of a person is omitted from the voters' list as finally revised and this person satisfies the returning officer on oath that he or she was under subsection 29 (1) otherwise entitled to be an elector and to be entered on the preliminary list except that he or she was not a Canadian citizen, if this person produces for the inspection of the returning officer his or her certificate of naturalization or other conclusive evidence that he or she has become a Canadian citizen, the returning officer may issue a certificate, in duplicate, in the prescribed form authorizing the proper deputy returning officer to enter the name of the person on the voters' list to entitle him or her to vote as if his or her name had been entered on the list before the list was revised.

Comment: Compare with s. 33 (2) of the Municipal Elections Act.

Correction of school support, etc., information on list by D.R.O.

(3) Where the information relating to the school support designation or the school board language section election choice of an elector as set out in the voters's list is incorrect and the elector, at any time after the preparation of the voters' list and prior to the closing of the voting stations on voting day, satisfies the returning officer on oath that he or she is an elector entitled to have the information relating to his or her designation or choice set out in the list corrected in the manner he or she requests, the returning officer may issue a certificate, in duplicate, in the prescribed form authorizing the deputy returning

officer for the proper voting division to correct the designation or choice of the elector on the voters' list and to permit the elector to vote accordingly.

Comment: See Recommendation 22.

Copy of certificate to assessment commissioner

(4) The returning officer shall retain a copy of any certificate issued under subsection (1), (2) or (3) and shall deliver or mail such copy to the assessment commissioner at such time as may be prescribed by regulation.

Comment: See Recommendation 23.

Certificate to be produced

(5) A person is not entitled to vote under this section unless at the time he or she requests a ballot he or she produces and files with the deputy returning officer the certificate given by the returning officer under subsection (1), (2) or (3).

Comment: Compare with s. 33 (3) of the Municipal Elections Act.

Entry on record of voters

(6) The deputy returning officer shall enter or cause to be entered on the record of voters maintained by the vote clerk the name and address of the person voting under the authority of a certificate issued under subsection (1) or (2) and then opposite the name of this person the words "voted under certificate" and the authority for the certificate.

Comment: Compare with s. 33 (4) of the Municipal Elections Act and s. 50 (2) of the Election Act, 1984.

Correction of school support designation, etc., on record of voters

(7) The deputy returning officer shall correct or cause to be corrected on the record of voters maintained by the vote clerk the school support designation or school board language section election choice of the elector voting under the authority of a certificate issued under subsection (3) and then opposite the name of this elector the words "voted under certificate" and the authority for the certificate.

Certificates to be kept in separate envelope

(8) The deputy returning officer shall enclose all certificates to which this section applies in a separate envelope.

Comment: Compare with s. 33 (5) of the Municipal Elections Act.

PART III

CANDIDATES

Qualification

Qualifications

48.-(1) A person is qualified to be a candidate for or to hold an office subject to election under this Act if, at the time of signing the consent to nomination, he or she is

(a) an elector as determined under subsection 29 (1);

(b) in the case of an election of,

(i) a public school board, a public school elector,

(ii) a Roman Catholic separate school board, a Roman Catholic separate school elector,

(iii) a Protestant separate school board, a Protestant separate school elector,

(iv) a member of a school board, which member is required by the Education Act or any other Act to be elected by public school electors, a public school elector, R.S.O., 1980, c. 129

(v) a member of a school board, which member is required by the Education Act or any other Act to be elected by Roman Catholic separate school electors, a Roman Catholic separate school elector,

(vi) the French-language section, or the English-language section, of a board under Part XI-A of the Education Act, a Roman Catholic separate school elector or a Protestant separate school elector or a public school elector who has chosen to vote to elect members of that section of the board; and

(c) not disqualified from being a candidate or from holding office under this Act.

Comment: See Recommendation 29. Compare with s. 37 of the Municipal Act, s. 196 of the Education Act, s. 26 (1) of the Election Act, 1984, s. 34 of the Municipal Election Act, and s. 41 of the Public Utilities Act.

Determination whether public or Roman Catholic or Protestant separate school elector

(2) For the purposes of clause (1)(b), the determination whether an elector is a public school elector or a Roman Catholic separate school elector or a Protestant separate school elector shall be in accordance with the school support designation indicated on the voters' list prepared by the revising officer under section 46, as amended under section 47 up to the time the consent to nomination is signed by the person who wishes to be a candidate for an office mentioned in that clause.

Determination whether linguistic school elector

(3) For the purposes of subclause (1)(b)(vi), the determination whether such elector has chosen to vote to elect members of the French-language section, or of the English-language section, of such board shall be in accordance with the choice indicated on the voters' list prepared by the revising officer under section 46, as amended under section 47 up to the time the consent to nomination is signed by the person who wishes to be a candidate for an office mentioned in that subclause.

Qualification, school board elections

(4) A person who is an elector in respect of an area for which one or more members of a school board are to be elected is qualified to be elected as a member of the board for any area within the jurisdiction of the board,

(a) by public school electors, if he or she is a public school elector in the area in which he or she is an elector;

(b) by Roman Catholic separate school electors, if he or she is a Roman Catholic separate school elector in the area in which he or she is an elector; or

(c) by Protestant separate school electors, if he or she is a Protestant separate school elector in the area in which he or she is an elector,

provided that this person is otherwise qualified under subsection (1).

Comment: See Recommendation 1. Compare with s. 196 (1a) of the Education Act.

(5) A person who is elected to office under this Act or who is appointed to fill a vacancy in such elected office under this or any other Act is qualified to hold that office during the term for which he or she was elected or appointed, as the case may be, so long as he or she maintains the qualifications required under subsection (1) or (4), as applicable, and does not become otherwise disqualified from holding office under this Act. Qualifications to be maintained and disqualifications

Comment: See Recommendation 29. Compare with s. 196 (4) of the Education Act.

(6) Where a person under subsection (5) fails to maintain the qualifications required under subsection (1) or (4), as applicable, or becomes otherwise disqualified from holding office under this Act, the office to which he or she was elected or appointed, as the case may be, shall be deemed vacant and shall be declared as such by the council, school board or local board, as the case may be, to which he or she was elected or appointed. When office deemed vacant

Comment: See Recommendation 30. Compare with s. 39 of the Municipal Act and s. 196 (4) of the Education Act.

(7) Where the failure of a person under subsection (5) to maintain the qualifications required under subsection (1) or (4), as applicable, is temporary in nature and is attributable to circumstances beyond his or her control, the council, school board or local board, as the case may be, to which the person has been elected or appointed may grant him or her an exemption from those qualifications for a period not to exceed three consecutive months in duration, which period is not renewable. Exemption

Comment: See Recommendation 30.

Disqualification

49.-(1) No person is qualified to be a candidate for or to hold an office subject to election under this Act, other than the office of member of a school board, Persons disqualified respecting elected offices other than school board

(a) who is an employee of the municipality or of a local board of the municipality, except a a commissioner, superintendent or overseer of any work, whose appointment is authorized under section 252 of the Municipal Act, unless he or she has been granted a leave of absence under subsection (4); R.S.O. 1980, c. 302

(b) who is a judge, justice of the peace or master of any court;

(c) who is a member of the Assembly or of the Senate or House of Commons of Canada;

(d) who is a Crown employee within the meaning of the Public Service Act and who is a deputy minister under that Act or who is in a position or classification designated in the regulations made under that Act for the purposes of section 11 of that Act; or — R.S.O. 1980, c. 418

(e) who is otherwise disqualified under this or any other Act or prohibited by law from being a candidate or from holding office.

Comment: See Recommendation 1. Compare with s. 38 (1) of the Municipal Act.

(2) Notwithstanding clause (1)(a), but without restricting the operation of that clause, an employee of, — The same

(a) a regional municipality,

(b) any local board of that regional municipality,

(c) any area municipality within that regional municipality, or

(d) any local board of that area municipality,

is not qualified to be a candidate for or to hold the office of,

(e) member of the council of that regional municipality,

(f) elected member of any local board of that regional municipality,

(g) member of the council of any area municipality within that regional municipality, or

(h) elected member of any local board of that area municipality,

unless he or she has been granted a leave of absence under subsection (4).

Comment: See Recommendation 1. Compare with s. 38 (2) of the Municipal Act.

The same

(3) Notwithstanding clause (1)(a), but without restricting the operation of that clause, an employee of,

(a) a county,

(b) any local board of that county,

(c) any local municipality within that county, or

(d) any local board of that local municipality,

is not qualified to be a candidate for or to hold the office of,

(e) member of the council of any local municipality within that county, or

(f) elected member of any local board of that local municipality,

unless he or she has been granted a leave of absence under subsection (4).

Comment: See Recommendation 1. Compare with s. 38 (2) of the Municipal Act.

Leave of absence

R.S.O. 1980, c. 302

(4) Any employee of a municipality or a local board of the municipality other than a commissioner, superintendent or overseer of any work whose appointment is authorized under section 252 of the Municipal Act, or any employee in the circumstances to which subsection (2) or (3) applies, who wishes to be a candidate to hold office as a member of the council of that municipality or that local board, or of the council of a municipality or a local board in the circumstances to which subsection (2) or (3) applies, shall apply to the council of the municipality or to the local board, as the case may be, of which he or she is an employee for leave of absence without pay for a period,

(a) not longer than that commencing forty days before the beginning of the period during which candidates may be nominated under this Act and ending on voting day; and

(b) not shorter than that commencing on the last day of the period during which candidates may be nominated under this Act and ending on voting day,

and every such application shall be granted.

Comment: See Recommendation 1. Compare with s. 38 (4) of the Municipal Act and s. 12 (2) of the Public Service Act.

Resignation

(5) Where an employee of a municipality or of a local board who has been granted leave of absence under subsection (4) is elected, the employee shall, before he or she assumes office, resign his or her position as such employee.

Comment: See Recommendation 1. Compare with s. 38 (5) of the Municipal Act and s. 12 (3) of the Public Service Act.

Service deemed continuous

(6) Where an employee of a municipality or of a local board who has been granted leave under subsection (4) is not elected, the period of leave of absence shall not be computed in determining the length of his or her service for any purpose, and the service before and after the period of leave shall be deemed to be continuous for all purposes.

Comment: See Recommendation 1. Compare with s. 38 (6) of the Municipal Act and s. 12 (5) of the Public Service Act.

Volunteer fire fighters

R.S.O. 1980, c.164

(7) A person is not ineligible to be a candidate for or to hold an office to which this section applies only by reason of being a volunteer fire fighter as defined in the Fire Departments Act and subsections (5) and (6) of this Act do not apply to a person who is a volunteer fire fighter but who is not otherwise employed by the municipality or a local board of the municipality.

Comment: See Recommendation 1. Compare with s. 38 (7) of the Municipal Act.

Persons disqualified respecting elected school board offices

50.-(1) No person is qualified to be a candidate for or to hold the office of member of a school board,

(a) who is an employee of the board, unless he or she has been granted a leave of absence under subsection (2);

(b) who is,

(i) a member of any other school board, or

(ii) a member of the council or an elected member of a local board of a municipality all or part of which is included in the area of jurisdiction of the board,

and whose term of office has at least two months to run after the last day for filing nominations for a by-election, unless before the closing of nominations the member has filed his or her resignation with the secretary of the other school board or with the clerk of the municipality, as the case may be;

(c) who is the clerk or treasurer or deputy clerk or deputy treasurer of a county or municipality, all or part of which is included in the jurisdiction of the board;

(d) who is a judge, justice of the peace or master of any court;

(e) who is a member of the Assembly or of the Senate or House of Commons of Canada;

(f) who is a Crown employee within the meaning of the Public Service Act and who is a deputy minister under that Act or who is a position or classification designated in the regulations made under that Act for the purposes of section 11 of that Act; or — R.S.O. 1980, c. 418

(g) who is otherwise disqualified under this or any other Act or prohibited by law from being a candidate or from holding office.

Comment: See Recommendation 1. Compare with ss. 195 and 196 (3) of the Education Act.

(2) Any employee of a school board who wishes to be a candidate to hold office as a member of that school board shall apply to the school board for a leave of absence without pay for a period, — Leave of absence

(a) not longer than that commencing forty days before the beginning of the period during which candidates may be nominated under this Act and ending on voting day; and

(b) not shorter than that commencing on the last day of the period during which candidates may be nominated under this Act and ending on voting day,

and every such application shall be granted.

Comment: See Recommendation 1. Compare with s. 38 (4) of the Municipal Act and s. 12 (2) of the Public Service Act.

Resignation

(3) Where an employee of a school board who has been granted leave of absence under subsection (2) is elected, the employee shall, before he or she assumes office, resign his or her position as such employee.

Comment: See Recommendation 1. Compare with s. 38 (5) of the Municipal Act and s. 12 (3) of the Public Service Act.

Service deemed continuous

(4) Where an employee of a school board who has been granted leave of absence under subsection (2) is not elected, the period of leave of absence shall not be computed in determining the length of his or her service for any purpose, and the service before and after the period of leave shall be deemed to be continuous for all purposes.

Comment: See Recommendation 1. Compare with s. 38 (6) of the Municipal Act and s. 12 (5) of the Public Service Act.

Person not to be candidate for or holder of more than one office

51. Subject to subsection 61 (2), no person shall qualify himself or herself as a candidate for or hold more than one office subject to election under this Act, whether in the same or in two or more municipalities or localities, and, if he or she is nominated for more than one of these offices and he or she is elected to any of them, his or her election is void and the office becomes vacant.

Comment: See Recommendation 1. Compare with s. 196 (5) of the Education Act and s. 40 of the Municipal Act.

Disqualification of persons convicted of bribery or corrupt practice

52. Subject to section 160, no person who has been convicted of bribery or committing a corrupt practice is eligible to be nominated as a candidate for any office subject to election under this Act, or to be elected or appointed to, or to hold such office, for six years after the date of his or her conviction, unless, in the case of a conviction for committing a corrupt practice, the presiding judge has found under section 151 that the person who committed the corrupt practice did so without any corrupt intent.

Comment: Compare with s. 105 of the Municipal Elections Act and s. 26 (5) of the Election Act, 1984.

53. No person who has become ineligible to be nominated as a candidate by virtue of section 187 or 226 or 227, as the case may be, is eligible to be nominated as a candidate for any office subject to election under this Act, or to be elected or appointed to, or to hold such office, subject to the exception provided in those sections, for the period specified in the sections. — Disqualification of persons for failure to comply with reporting requirements, etc. when candidate previously

Comment: See Recommendation 49.

Nominations

54.-(1) A person who is qualified to be a candidate in an election may be nominated for office on nomination day or at any time during the Thursday and Friday immediately preceding nomination day. — Nomination period

Comment: Compare with ss. 34 and 35 (1) of the Municipal Elections Act and s. 27 (10) of the Election Act, 1984.

(2) Nomination day for a general election shall be Monday, the twenty-ninth day before voting day. — Nomination day

Comment: See Recommendation 50. Compare with s. 35 (1) of the Municipal Elections Act.

(3) A person may be nominated as a candidate in an election between the hours of 9 o'clock in the morning and 5 o'clock in the afternoon during the period specified in subsection (1). — Hours of nomination

Comment: Compare with s. 35 (2) of the Municipal Elections Act.

(4) The returning officer shall, at least seven days prior to nomination day, post in at least two conspicuous public places in the municipality or locality notice of the place where and the days and hours when nominations may be filed and of the offices for which persons may be nominated as candidates in the election and, where there is a newspaper having general circulation in the municipality or locality, publish at least seven days prior to nomination day the notice in that newspaper. — Notice of place and time for filing nominations

Comment: Compare with s. 35 (3) of the Municipal Elections Act.

55.-(1) A person may be nominated as a candidate for an office by filing, either personally or through his or her agent, in the office of the returning officer, on the days and during the hours specified in subsections 54 (1) and (3), a nomination paper in prescribed form which, Method of nomination

(a) shall be signed by at least ten electors whose names are entered on the voters' list or who have applied under section 47 to have their names included on the list and who are entitled to vote in the election to that office;

(b) shall state the name and address of the person nominated in such manner as will identify him or her and the office for which he or she is nominated; and

(c) shall state the name and address of each elector signing the nomination paper and, where the office for which the person is nominated is that of member of a school board, that this nominator is a public school elector or a Roman Catholic separate school elector or a Protestant separate school elector or is such elector and has chosen to vote to elect members of the French-language section, or of the English-language section, of a board under Part XI-A of the Education Act, as the fact is. R.S.O. 1980, c. 129

Comment: Compare with s. 36 (1) of the Municipal Elections Act.

(2) The address referred to in clauses (1)(b) and (c) shall be the address within the municipality or locality of the person nominated or the elector signing the nomination paper, as the case may be. What address to be shown

Comment: Compare with s. 36 (1a) of the Municipal Elections Act.

(3) A nomination paper nominating a person for an office the holder of which is required to be elected by public school electors shall be signed by public school electors only. Public school nominators

Comment: Compare with s. 36 (3) of the Municipal Elections Act.

(4) A nomination paper nominating a person for an office the holder of which is required to be elected by Roman Catholic separate school electors shall be signed by Roman Catholic separate school electors only. — Roman Catholic separate school nominators

Comment: Compare with s. 36 (4) of the Municipal Elections Act.

(5) A nomination paper nominating a person for an office the holder of which is required to be elected by Protestant separate school electors shall be signed by Protestant separate school electors only. — Protestant separate school nominators

(6) A nomination paper nominating a person for an office the holder of which is required to be elected by public school electors or Roman Catholic separate school electors or Protestant separate school electors who have chosen to vote to elect members of the French-language section, or of the English-language section, of a board under Part XI-A of the Education Act shall be signed by those electors only. — Linguistic school nominators

(7) For the purposes of subsections (4) and (5), the determination whether an elector is a public school elector or a Roman Catholic separate school elector or a Protestant separate school elector shall be in accordance with the school support designation indicated on the voters' list prepared by the revising officer under section 46, as amended under section 47 up to the time the nomination paper is filed. — Determination whether public or Roman Catholic or Protestant separate school elector

Comment: Compare with s. 36 (8) of the Municipal Elections Act.

(8) For the purposes of subsection (6), the determination whether such elector has chosen to vote to elect members of the French-language section, or of the English-language section, of such board shall be in accordance with the choice indicated on the voters' list prepared by the revising officer under section 46, as amended under section 47 up to the time the nomination paper is filed. — Determination whether linguistic school elector

(9) Each person to be nominated for election to an office shall be nominated by a separate nomination paper, but an elector may sign more than one nomination paper for the same person and the nomination papers of more than one person. — Separate nomination papers

Comment: Compare with s. 36 (5) of the Municipal Elections Act.

(10) The person nominated for election to an office is responsible for filing a proper nomination paper. — Person nominated responsible

Comment: Compare with s. 36 (7) of the Municipal Elections Act.

56.-(1) Where Part XIV applies, the nomination paper shall include or be accompanied by, — Registration with C.O.E.F., etc.

(a) a statement by the person nominated that he or she has filed, or an undertaking by this person that he or she will file, an application for registration with the Commission on Election Finances as required by section 198; and

(b) if the person nominated had filed a notice of registration under section 168 and under that authority has accepted contributions prior to the campaign period as defined in section 193, a report or, if applicable, a statutory declaration containing the same information required by section 185 up to the date of the commencement of the campaign period.

(2) The provisions of Part XIII, other than the time limitation prescribed in section 185 applies to any report or statutory declaration that is included with or accompanies the nomination paper by virtue of clause (1)(b). — Application of Part XIII

57. No nomination is valid unless there is filed with the nomination paper a consent in writing to the nomination and a declaration of qualification made in the prescribed form by the person nominated. — Consent and declaration to be filed

Comment: Compare with s. 36 (2) of the Municipal Elections Act.

58.-(1) For an election in a municipality having a population of more than 50,000, every nomination paper shall be accompanied by a deposit of, — Deposit to be filed in elections in large municipalities

(a) where the person nominated is running for the office of head of council, $200, and

(b) where the person nominated is running for any other office, $100,

in the form of cash or in the form of a money order or certified cheque made payable to the treasurer of the municipality which is responsible for the conduct of the election, or in any combination of those forms.

Exception

(2) Subsection (1) does not apply to elections to the offices of member of a school board or of a local board whose members are to be elected at elections required by law to be conducted by the same officers and in the same manner as elections of members of the council of the municipality.

Comment: See Recommendation 28. Compare with s. 27 (5) of the Election Act, 1984.

Refund

(3) Subject to subsection (5), the deposit under subsection (1) shall be refunded to the candidate if the candidate,

(a) withdraws his or her nomination under section 61;

(b) is declared elected to office by acclamation under section 64; or

(c) receives at least ten per cent of the total number of votes cast for the candidate receiving the greatest number of votes for the office which is being contested in the election.

Comment: See Recommendation 28. Compare with s. 27 (6) of the Election Act, 1984.

Return of deposit on death of candidate

(4) Subject to subsection (5), the deposit of a candidate who dies before the close of the voting stations on voting day shall be returned to the personal representative of the candidate.

Comment: See Recommendation 28. Compare with s. 31 (2) of the Election Act, 1984.

Deposit not to be refunded or returned unless report filed, etc.

(5) No deposit shall be refunded under subsection (3) or returned under subsection (4), unless,

(a) where Part XIII applies, a report on the candidate's election contributions and expenses has been filed in accordance with section 185; or

(b) where Part XIV applies, the candidate's financial statement for the election has been filed in accordance with section 224 or 228, as

the case may be, and the candidate's surplus, if any, has been paid over in accordance with section 225.

Comment: See Recommendation 49.

(6) A deposit that is not refunded or returned under this section shall be paid into the general funds of the municipality. — Deposit forfeited to municipality

Comment: See Recommendation 28.

59.-(1) Where a nomination paper is filed in the office of the returning officer, the returning officer shall endorse upon it the date and time of its filing and, where the nomination paper is accompanied by a deposit, the returning officer shall also issue a receipt in the amount of the deposit. — Endorsement by returning officer

Comment: Compare with s. 37 (1) of the Municipal Elections Act.

(2) Where a nomination paper is filed in the office of the returning officer prior to nomination day, the paper shall be examined by the returning officer and, if the returning officer is satisfied that the required number of the nominators whose signatures appear on the nomination paper are electors entitled to vote for the office, the returning officer shall certify this fact in writing on the paper. — Certificate of returning officer

Comment: Compare with s. 37 (2) of the Municipal Elections Act.

(3) When the nomination papers have been certified by the returning officer, the returning officer shall cause the name and address of each candidate nominated and the office for which the candidate is nominated to be posted in his or her office or other conspicuous place open to inspection by the public. — Posting

Comment: Compare with s. 37 (3) of the Municipal Elections Act.

(4) Where a nomination paper is filed in the office of the returning officer on nomination day, — Where filed on nomination day

(a) the returning officer shall accept the nomination paper and cause the name of the person nominated to be posted in accordance with subsection (3);

(b) if, on examination of the nomination paper prior to 4 o'clock in the afternoon on the day following nomination day, the returning officer determines that the required number of nominators whose signatures appear on the nomination paper are not electors entitled to vote for the office, the returning officer shall reject the nomination and give notice of the rejection immediately by personal service or by registered mail to the person nominated and all candidates for that office, but, if the returning officer is satisfied that the nominators meet such requirements, the returning officer shall certify this fact in writing on the paper.

Comment: Compare with s. 37 (3) of the Municipal Elections Act.

Where number of candidates nominated insufficient

(5) Where, at 5 o'clock in the afternoon of the day following nomination day, the number of candidates who have been nominated for an office and have not withdrawn under subsection 61 (1) is not sufficient to fill the number of vacancies to which candidates may be elected, subsection 64 (1) respecting acclamation applies to those candidates, but additional nominations for the remaining vacancies in the office concerning which there was an insufficient number of candidates may be filed in the office of the returning officer on the Wednesday following nomination day between the hours of 9 o'clock in the morning and 5 o'clock in the afternoon and the provisions of subsection (4) of this section and subsection 61 (1) apply, with necessary modifications.

Comment: Compare with s. 37 (5) of the Municipal Elections Act.

Certification by returning officer conclusive and final

(6) Certification of a nomination paper by the returning officer in accordance with subsection (2) or (4) shall be conclusive evidence of the facts certified in the paper and shall not be open to later challenge.

Comment: Compare with s. 37 (6) of the Municipal Elections Act.

Possession of nomination paper by returning officer

(7) Where a nomination paper is certified by the returning officer under this section, it shall remain in the possession of the returning officer but shall be open to inspection by any person during the normal office hours of the returning officer.

Comment: Compare with s. 36 (6) of the Municipal Elections Act.

List of candidates

60. The returning officer shall prepare and keep in his or her office a list setting out the name and residence of every candidate whose nomination has been certified under section 59 for the respective offices for which persons may be nominated in the order of certification and copies of this list shall be prominently displayed in one or more locations there and the list shall be completed no later than 4 o'clock in the afternoon of the day following nomination day, provided that, where the returning officer has received additional nominations under subsection 59 (5), a list showing the names of the additional candidates nominated shall be completed and posted by the returning officer no later than 4 o'clock in the afternoon of the Thursday following nomination day.

Comment: Compare with s. 37 (7) of the Municipal Elections Act.

Withdrawal of Nomination

Withdrawal of nomination

61.-(1) A person nominated as a candidate in an election may withdraw his or her nomination by delivering to the returning officer, before 5 o'clock in the afternoon of the day following nomination day, a notice of withdrawal, in the prescribed form, signed by the person in the presence of a witness and by the witness.

Comment: Compare with s. 39 (1) of the Municipal Elections Act and s. 30 (1) of the Election Act, 1984.

Where nominated in more than one office

(2) Where a person has been nominated for more than one office, he or she may withdraw in respect of one or more offices for which he or she is nominated by filing a notice of withdrawal, in the prescribed form, with the returning officer in his or her office before 5 o'clock in the afternoon of the day following nomination day and in default this person shall be deemed to be nominated for the office for which he or she was first nominated and to have withdrawn the nomination for any other office.

Comment: Compare with s. 39 (2) of the Municipal Elections Act.

Death of Candidate

Election on death of candidate

62.-(1) If, a candidate nominated for election to an office dies before the close of the vote on voting day for the election and, as a result,

(a) a person would be elected by acclamation to this office, the election to that office is void and a by-election shall be held to fill it; or

(b) no person would be elected by acclamation to this office, the name of the deceased candidate shall be omitted from the ballots or, if the ballots have already been printed, the returning officer shall cause notice of the death of the candidate to be posted in a conspicuous place in every voting station and the election shall proceed as if the deceased candidate had not been nominated.

Comment: Compare with s. 38 (1) of the Municipal Elections Act.

Death of candidate for head of council

(2) Notwithstanding subsection (1), if a candidate nominated for election to the office of head of the council of a municipality dies before the close of the vote for the election and,

(a) prior to 5 o'clock on the afternoon of nomination day, additional nominations for the office may be filed in the office of the returning officer on the Wednesday following nomination day between the hours of 9 o'clock in the morning and 5 o'clock in the afternoon and the provisions of subsection 59 (4) apply, with necessary modifications, as though the additional nomination papers had been filed on nomination day; or

(b) after 5 o'clock on the afternoon of nomination day, the election to this office is void and a by-election shall be held to fill it.

Comment: Compare with s. 38 (2) of the Municipal Elections Act.

Canvassing

Entry by political canvassers

63.-(1) No person or corporation or employee or agent of such person or corporation shall restrict reasonable access to his, her or its property by candidates nominated for election under this Act, or their authorized representatives, for the purpose of canvassing or distributing election material.

Access to be exercised responsibly

(2) The right of reasonable access under subsection (1) shall be exercised by a candidate or his or her authorized representative in a responsible manner so as not to interfere with or disturb unreasonably the ordinary use of the property.

R.S.O. 1980, cc. 84, 237 and 452 not affected

(3) This section does not, in any way, affect the right of reasonable access conferred by section 30 of the Condominium Act, section 94 of the Landlord and Tenant Act and section 35 of the Residential Tenancies Act.

Crown bound

(4) This section binds the Crown in right of Ontario.

PART IV

ACCLAMATIONS

Acclamation

64.-(1) If no more candidates are nominated at the end of nomination day for any office than the number to be elected, the returning officer shall immediately after 5 o'clock in the afternoon of the day following nomination day declare that candidate or those candidates elected by acclamation.

Comment: Compare with s. 40 (1) of the Municipal Elections Act.

The same

(2) In the case where additional nominations have been filed under subsection 59 (5) and the additional number of candidates nominated is not more than the remaining number of vacancies for which the additional candidates were nominated, the returning officer shall immediately after 5 o'clock in the afternoon of the Thursday following nomination day declare that candidate or those candidates elected by acclamation.

Comment: Compare with s. 40 (2) of the Municipal Elections Act.

The same

(3) If more candidates are nominated for an office than the number to be elected but one or more candidates withdraws his or her nomination so that the number remaining is no more than the number required to be elected, the returning officer shall immediately after 5 o'clock on the afternoon of the day following nomination day declare the remaining candidate or candidates to be elected by acclamation.

Comment: Compare with s. 40 (3) of the Municipal Elections Act.

Vacancy

(4) If the number of candidates declared to be elected by acclamation to an office under subsection (1), (2) or (3) is less than the number to be elected to this office so there is a vacancy, a by-election shall be held to fill the vacancy, except that, where the number of candidates declared to be elected is sufficient to form a quorum, the vacancy may be filled, in the case of the council of a municipality or a school board, in accordance with Part IX of this Act or, in the case of a local board, in accordance with the applicable provisions of the Act under which the board was established.

Comment: Compare with s. 40 (4) of the Municipal Elections Act.

Notice of acclamation

(5) Where a candidate is declared to be elected by acclamation to an office under subsection (1), (2) or (3), notice of the election of this candidate shall be given by the returning officer immediately after he or she has declared the election of the candidate,

(a) by posting the notice in at least two conspicuous public places in the municipality or locality;

(b) where there is a newspaper having general circulation in the municipality or locality, by publishing the notice at least once in that newspaper; and

(c) where a vote of the electors is not required under Part V, by sending a copy of the notice posted and published in accordance with clauses (a) and (b) to the Commission.

Where quorum not elected

(6) Where in any election the total number of members of the council of a municipality or of a school board or of a local board, as the case may be, declared elected by acclamation under this section and those elected as a result of the vote in the election is less than the quorum of the council or of the board, the returning officer shall immediately notify,

(a) in the case of a municipality, the Minister of Municipal Affairs;

(b) in the case of a school board, the Minister of Education; or

(c) in the case of a local board, the person responsible for the board under the Act that established it,

who may order that a by-election be held to fill the vacancy or vacancies or recommend a change in the status of the municipality or of the board or take any other action as he or she considers necessary, and until such action is taken the council or school board or local board in office for the preceding year shall continue in office.

Comment: Compare with s. 40 (5) of the Municipal Elections Act.

PART V

VOTING PROCEDURES

Notice of Vote

Vote required

65.-(1) Where more candidates are nominated for election to an office than the number required to fill that office, the returning officer shall hold a vote of the electors to elect the holder of that office.

Comment: Compare with s. 41 (1) of the Municipal Elections Act.

Notice of vote

(2) Subject to subsection (3), notice of,

(a) the date and time for the holding of the vote in an election, including the advance vote;

(b) the location of the voting stations;

(c) the last day for making application to the returning officer to vote by proxy;

(d) the procedure to be followed under section 47 or 79 where a person who is entitled to be an elector but whose name was omitted from the voters' list wishes to vote or where the information relating to the school support designation or the school board language section election choice of an elector as set out in the voters' list is incorrect; and

(e) the place at which and the last day on which a request or application for a recount may be filed,

shall be given by the returning officer immediately after he or she has determined under subsection (1) that a vote is required,

(f) by posting the notice in at least two conspicuous public places in the municipality or locality; and

(g) where there is a newspaper having general circulation in the municipality or locality, by publishing the notice at least once in that newspaper.

Comment: Compare with s. 41 (2) and s. 46 (9) of the Municipal Elections Act.

(3) The returning officer shall, in addition to the responsibilities under subsection (2), advise each elector of the date and time of voting, including advance voting, and the location of the voting station in which the elector is to vote, — The same

(a) in the case of a resident elector, by mailing or causing to be delivered to the elector a notice of the date and time of voting and of the location of the voting station; and

(b) in the case of a non-resident elector, by mailing to the elector a notice of the date and time of voting and of the location of the voting station.

Comment: Compare with s. 46 (7), (8) and (10) of the Municipal Elections Act.

(4) Where, by reason of a disruption in mail delivery service, it is not possible to comply with subsection (3), the returning officer shall publish a notice at least once in a newspaper having general circulation in the municipality or locality advising the electors of the date and time of voting, including advance voting, and of the location of the voting station in which each elector is to vote. — Where postal service disrupted

Comment: Compare with s. 46 (11) of the Municipal Elections Act.

Voting by Ballot

66.-(1) Where a vote is held in an election, the votes shall be given by ballot. — Voting by ballot

Comment: Compare with s. 42 (1) of the Municipal Elections Act.

(2) Instead of using paper ballots under this Act, the council of a municipality may, by by-law passed on or before the 15th day of January in an election year, authorize the use at elections of voting machines, voting recorders or other voting devices, and a copy of any such by-law shall be sent by the clerk of the municipality to the Commission immediately after it is passed. — Voting machines, etc.

Comment: See Recommendation 18. Compare with s. 42 (2) of the Municipal Elections Act.

Regulation

(3) Where a municipality authorizes the use of voting machines, voting recorders or other voting devices, the Commission shall, by regulation, provide for procedures which may be necessary to conduct the election by the use of these machines, recorders or devices and the provisions of the regulation shall be complied with.

Comment: Compare with s. 42 (4) of the Municipal Elections Act.

Repealing by-law

(4) A by-law passed under subsection (2) or a predecessor of it shall remain in force until repealed by the council of the municipality, but no such repealing by-law shall take effect for the purposes of the election next following its passage unless the repealing by-law is passed on or before the 15th day of January in the year in which the election is held.

Comment: Compare with s. 42 (3) of the Municipal Elections Act.

Preparation and Form of Ballot

Ballots

67.-(1) A returning officer who is required to hold a vote under section 65 shall prepare and cause to be printed a sufficient number of ballots in the prescribed form for use in the election.

Comment: Compare with s. 43 (1) of the Municipal Elections Act.

Nomination of candidate must be certified

(2) The name of a person shall not be included in a ballot as a candidate for office unless his or her nomination as a candidate for this office has been certified by the returning officer under section 59.

Comment: Compare with s. 43 (2) of the Municipal Elections Act.

Order of names

(3) Subject to subsection (5), the names of the candidates shall be shown on a ballot in order of their surnames, alphabetically arranged, with given names preceding the surnames, and with the surnames in bold type.

Comment: Compare with s. 43(3) of the Municipal Elections Act and s. 34 (2) of Elections Act, 1984.

Similarity of names

(4) Where there are two or more candidates for election to an office whose given and surnames are identical or so nearly identical as to create the possibility of confusion, the address, being the qualifying address within the municipality or locality, of all candidates for election to this office shall be shown on the face of the ballot for the office immediately under their names and in sufficient detail as to identify each candidate.

Comment: Compare with s. 43 (4) of the Municipal Elections Act and s. 27 (8) of the Election Act, 1984.

Nicknames and titles

(5) Except as provided in subsection (4), no identification such as a title, honour, decoration, degree or occupation shall be included with any candidate's name on a ballot to be used in an election, but a name commonly called a nickname or any other name by which a candidate is commonly known may be used on the ballot as the name or part of the name of the candidate.

Comment: Compare with s. 43 (5) of the Municipal Elections Act and s. 34 (5) of the Election Act, 1984.

Space for indicating vote

(6) There shall appear on the ballot to the right of each candidate's name a circle or a circular space suitable for the marking of the ballot.

Comment: Compare with s. 43 (6) of the Municipal Elections Act and s. 34 (3) of the Election Act, 1984.

Ballots for same office to be alike

(7) All ballots for election to the same office shall be of the same description and as nearly alike as possible, and the names, and the addresses, if given, of the candidates, the circle or circular space, the instructions referred to in subsection (8) and any lines on the ballot shall be in one colour, and the remainder of the face of the ballot shall be another colour, but different colours may be used for ballots to be used for election to different offices.

Comment: Compare with s. 43 (7) of the Municipal Elections Act and ss. 34 (1) and (4) of the Election Act, 1984.

Number of candidates and name of office

(8) A ballot shall contain instructions as to the number of candidates for which an elector may vote and the name of the office for which the election is being held.

Comment: Compare with s. 43 (8) of the Municipal Elections Act.

(9) In a regional municipality, a ballot shall contain information showing the name of the office for which the election is being held and the name of any office on any other council which will be held as a result of the election to this office. — Information on ballot in regional municipalities

Comment: Compare with s. 43 (9) of the Municipal Elections Act.

(10) The ballots for voting to obtain the assent or the opinion of electors on any by-law or question shall be in the prescribed form. — Ballots for questions

Comment: Compare with s. 43 (10) of the Municipal Elections Act.

68.-(1) For an election in a municipality in which the members of council are elected by wards, there shall be prepared one set of ballots for all the voting divisions containing the names of the candidates for the office of head of council and another set for all the voting divisions containing the names of the candidates for the office of alderman or councillor for the ward. — Wards in municipality

Comment: Compare with s. 44 (1) of the Municipal Elections Act.

(2) For an election in a city or town in which the members of council are elected at large, there shall be prepared for all the voting divisions one set of ballots containing the names of the candidates for the offices of mayor, or mayor and reeve, or mayor, reeve and deputy reeve, as the case may be, and another set containing the names of the candidates for the office of alderman or councillor. — At-large vote in city or town

Comment: Compare with s. 44 (2) of the Municipal Elections Act.

(3) For an election in the Borough of East York, there shall be prepared one set of ballots for all the voting divisions containing the names of the candidates for the office of mayor and another set for each ward containing the names of the candidates for the office of alderman. — Borough of East York

Comment: Compare with s. 44 (3) of the Municipal Elections Act.

(4) For an election in a village or township, there shall be prepared one set of ballots containing the names of the candidates for the office of reeve or of reeve and deputy reeve, as the case may be, and for the office of councillor. — Village or township

Comment: Compare with s. 44 (4) of the Municipal Elections Act.

(5) The council of a town may by by-law provide that the ballots for an election to the offices of mayor, reeve and deputy reeve shall be prepared in separate sets, and the council of a village or township may by by-law provide that the ballots for an election to the offices of reeve, deputy reeve and councillor shall be in separate sets. — By-law providing for separate sets

Comment: Compare with s. 44 (5) of the Municipal Elections Act.

(6) A by-law under subsection (5) shall be passed not later than the 15th day of January in an election year and remain in force until repealed, and while in force the prescribed ballots shall be prepared accordingly. — When to be passed

Comment: Compare with s. 44 (6) of the Municipal Elections Act.

(7) There shall also be separate sets of ballots, — Separate sets for controller, school board, by-laws, etc.

(a) containing the names of the candidates for the office of,

(i) controller,

(ii) member of a school board,

(iii) member of a local board,

(iv) trustee of a police village,

(v) chairman of the council of a regional municipality;

(vi) member of the council of a regional municipality, or

(vi) member of the council of both an area municipality and a regional municipality;

(b) for obtaining the assent of the electors on any by-law or the opinion of the electors on any question required or authorized by law to be submitted to them at an election.

Comment: Compare with s. 44 (7) of the Municipal Elections Act.

(8) Where more than one by-law or question is to be submitted to the electors at an election, all of these by-laws or questions may be placed on one ballot paper. — More than one by-law, etc.

Comment: Compare with s. 44 (8) of the Municipal Elections Act.

69.-(1) Instead of using separate ballots under this Act, the council of a municipality may, by by-law passed not later than the 15th day of January in an election year, authorize the use at an election of composite ballots in such form, subject to subsections 68 (1) to (8), as the by-law prescribes. — Composite ballots

Comment: Compare with s. 45 (1) of the Municipal Elections Act.

(2) A composite ballot or ballots may contain, — Contents

(a) the names of candidates for the offices of member of council, member of a school board, member of a public utility commission or of any other local board whose members are required to be elected by the electors of the municipality or for any one or more of these offices; and

(b) any by-law or question required or authorized by law to be submitted to the electors for their assent or opinion.

Comment: Compare with s. 45 (2) of the Municipal Elections Act.

(3) No elector shall be given a composite ballot containing the names of candidates for an office or containing a by-law or question for which the elector is not entitled to vote. — Not to be given to elector not entitled to vote for office on ballot

Comment: The same as s. 45 (3) of the Municipal Elections Act.

(4) A by-law passed under this section remains in force until repealed, but no such repealing by-law shall be passed later than the 15th day of January in an election year. — By-law in force until repealed

Comment: Compare with s. 45 (4) of the Municipal Elections Act.

Supplies and Equipment for Voting Stations

70.-(1) The returning officer shall, before voting day, cause to be delivered to the deputy returning officer for a voting station in the municipality or locality. — Supplies for voting stations

(a) a ballot box for the voting station;

(b) a voting screen for use at the voting station;

(c) a sufficient number of ballots to supply the electors in the voters' list of the voting station;

(d) a sufficient number of the prescribed directions for the guidance of electors on the use of the voting station;

(e) two copies of the voters' list for the voting station;

(f) all materials necessary for electors to mark their ballots; and

(g) such other materials as are prescribed.

Comment: Compare with ss. 46 (3) and 48 (1) of the Municipal Elections Act and s. 38 of the Election Act, 1984.

(2) A ballot box shall be made of durable material, provided with lock and key, and so constructed that the ballots can be deposited in the box but cannot be withdrawn without unlocking it. — Ballot box

Comment: Compare with s. 48 (2) of the Municipal Elections Act and s. 37 (2) of the Election Act, 1984.

(3) When delivering the ballots for a voting station to a deputy returning officer the returning officer shall certify the number of ballots so delivered and upon receiving them the deputy returning officer shall count the ballots and send the prescribed receipt for them to the returning officer, and — Returning officer to certify number of ballots

shall keep the certificate for return to the returning officer with the other documents required to be returned to the returning officer under section 102.

Comment: Compare with s. 48 (3) of the Municipal Elections Act.

Privacy when marking ballots

(4) The deputy returning officer, before opening the voting station and during the time that the voting station is open, shall ensure that the voting screen at the voting station is so positioned that electors may mark their ballots with maximum privacy and, in particular, without other persons being able to see how they are marked.

Comment: Compare with s. 46 (3) of the Municipal Elections Act and s. 38 (2) of the Election Act, 1984.

Directions to be placarded

(5) The deputy returning officer before opening the voting station, or immediately after he or she has received the printed directions from the returning officer if they were not received before opening the voting station, shall cause them to be placarded outside the voting station and shall see that they remain so placarded until the close of the voting.

Comment: Compare with s. 48 (4) of the Municipal Elections Act.

Record of voters

(6) One of the two copies of the voters' list for the voting station delivered to the deputy returning officer under subsection (1) shall be designated by the deputy returning officer as the record of voters for the voting station.

Record to be maintained by vote clerk

(7) Except where otherwise provided, the record of voters designated under subsection (6) shall be maintained by the vote clerk.

Where and How Often Electors May Vote

Number of votes that may be given by an elector

71.-(1) An elector whose name appears in the voters' list for a voting division or who presents a certificate to vote there under section 47 or 73 or 79 is entitled to vote in an election in that division in accordance with the following rules:

1. The elector is entitled to vote once only, for any candidate for any office, in an election in a municipality or a school board jurisdiction, as the case may be.

2. The elector, if resident in the municipality or locality, is entitled to vote only in the voting division in which he or she resides.

3. The elector, if not resident in the municipality or locality, is entitled to vote only in the voting division in which his or her name appears on the voters' list.

4. The elector is entitled to vote once only for one candidate for chairman of the council of a regional municipality.

5. The elector is entitled to vote once only for one candidate for member of the council of a regional municipality.

6. The elector is entitled to vote once only for one candidate for each of mayor, reeve or deputy reeve, as the case may be.

7. The elector is entitled to vote for as many candidates for controller as there are controllers to be elected but once only for each candidate.

8. Where the election of aldermen, councillors, trustees or members of school boards or of local boards is at large, the elector is entitled to vote for as many candidates for these offices as there are candidates to be elected but once only for each candidate.

9. Where the aldermen, councillors, trustees or members of school boards or of local boards are elected by wards, the elector is entitled to vote for as many candidates for these offices as there are candidates to be elected for the ward but once only for each candidate.

10. Where the election is to the office of member of a school board to be elected by public school electors in a municipality or locality, or a part of it, or in a combination of municipalities or localities, in which the voting division is

located, a public school elector is entitled to as many votes as there are members to be elected by the public school elector in that municipality or locality, or part, or combination of municipalities or localities, as the case may be, but may not give more than one vote to any one candidate.

11. Where the election is to the office of member of a school board to be elected by Roman Catholic separate school electors in a municipality or locality, or in a part of it, or in a combination of municipalities or localities, in which the voting division is located, a Roman Catholic separate school elector is entitled to as many votes as there are members to be elected by the Roman Catholic separate school electors in that municipality or locality, or part, or combination of municipalities or localities, as the case may be, but may not give more than one vote to any one candidate.

12. Where the election is to the office of member of a school board to be elected by Protestant separate school electors in a municipality or locality, or in a part of it, or in a combination of municipalities or localities, in which the voting division is located, a Protestant separate school elector is entitled to as many votes as there are members to be elected by the Protestant separate school electors in that municipality or locality, or part, or combination of municipalities or localities, as the case may be, but may not give more than one vote to any one candidate.

13. Where the election is to the French-language section, or the English-language section, of a board under Part XI-A of the Education Act, an elector is entitled to as many votes as there are members of the French-language section or the English-language section, as the case may be, of the board but may not give more than one vote to any one candidate. R.S.O. 1980, c. 129

14. An elector who is entitled to vote on any by-law or question required or authorized by law to be submitted for the assent or opinion of the electors is entitled to vote once only on this by-law or question.

Comment: Compare with s. 49 (1) of the Municipal Elections Act.

(2) For the purposes of this section, the determination whether an elector is a public school elector or a Roman Catholic separate school elector or a Protestant separate school elector or whether an elector is entitled to vote in an election to the French-language section, or the English-language section, of a school board shall be in accordance with the support or the choice indicated on the voters' list as certified under section 46 or, if applicable, on the certificate issued under subsection 47 (3) or by the certificate completed in accordance with subsection 79 (2).

Determination of whether public or Roman Catholic or Protestant separate school elector, etc.

Comment: See Recommendation 22. Compare with s. 49 (4) of the Municipal Elections Act.

72.-(1) Every employee who is entitled to vote shall, while the voting stations are open on voting day at an election, have three consecutive hours to vote and, if the hours of employment do not allow for three consecutive hours, the employee may request that the employer allow the employee such additional time for voting as may be necessary to provide these three consecutive hours and the employer shall grant the request.

Employees to have three consecutive hours for voting

Comment: Compare with s. 49 (2) of the Municipal Elections Act and s. 6 (3) of the Election Act, 1984.

(2) Any time off for voting as provided under subsection (1) shall be granted at the time of day that best suits the convenience of the employer.

Time off best suiting convenience of employer

Comment: Compare with s. 49 (2) of the Municipal Elections Act and s. 6 (5) of the Election Act, 1984.

(3) No employer shall make any deduction from the pay of an employee or impose upon or exact from an employee any penalty by reason of his or her absence from work during the consecutive hours that the employer is required to allow the employee under subsection (1).

Deduction from pay prohibited

Comment: Compare with s. 49 (3) of the Municipal Elections Act and s. 6 (4) of the Election Act, 1984.

73.-(1) Subject to subsection (2), at the request of a person whose name is entered on the voters' list for a voting station in a municipality or locality and who has been appointed a deputy returning officer, vote clerk, or other election officer at another voting station, the returning

Voting of D.R.O., vote clerk, etc., where employed

officer shall give him or her a certificate in the prescribed form to permit him or her to vote at the voting station at which he or she is employed during voting day.

Comment: Compare with s. 50 (1) of the Municipal Elections Act and s. 24 (2)(b)(ii) of the Election Act, 1984.

(2) No certificate shall be issued under this section entitling an elector in a municipality that is divided into wards to vote at a voting division in a ward different from the ward in which the voting station at which the elector is otherwise entitled to vote is situated. — Where municipality divided into wards

Comment: Compare with s. 50 (2) of the Municipal Elections Act.

(3) The returning officer shall not give a certificate under this section until he or she has ascertained by reference to the voters' list or to a certificate under section 47 that the applicant is entitled to vote, and the person to whom the certificate has been given is not afterwards entitled to vote at the voting station at which, by the voters' list or by certificate under section 47, he or she had been entitled to vote. — When certificate may be given

Comment: Compare with s. 50 (3) of the Municipal Elections Act.

(4) The certificate shall designate the voting station at which the person is to be permitted to vote. — Certificate

Comment: Compare with s. 50 (4) of the Municipal Elections Act.

74.-(1) A person who produces a certificate given to him or her under section 73 is entitled to vote at the voting station designated in the certificate, but the certificate does not entitle him or her to vote there unless he or she has been actually engaged there as a deputy returning officer, vote clerk or other election officer during voting day. — Certificate entitled person to vote

Comment: Compare with s. 51 (1) of the Municipal Elections Act.

(2) A person voting under the authority of a certificate shall give it to the deputy returning officer before receiving a ballot to vote. — Certificate to be given to D.R.O.

Comment: The same as s. 51 (3) of the Municipal Elections Act and with s. 50 (1) of the Election Act, 1984.

(3) The deputy returning officer shall enter or cause to be entered on the record of voters maintained by the vote clerk the name and address of the person voting under the authority of a certificate issued under section 73 and then opposite the name of this person the words "voted under certificate" and the authority for the certificate. — Entry on record of voters

Comment: Compare with s. 51 (2) of the Municipal Elections Act and s. 50 (2) of the Election Act, 1984.

(4) The deputy returning officer shall enclose all certificates to which this section applies in a separate envelope. — Certificate to be kept in envelope

Comment: Compare with s. 51 (4) of the Municipal Elections Act and s. 50 (2) of the Election Act, 1984.

Advance Vote

75.-(1) The returning officer shall hold an advance vote on the Saturday ten days before voting day for the purpose of receiving votes of electors who expect to be unable to vote on voting day in the voting divisions for which their names appear on the voters' lists or who are entitled to vote under a certificate issued by the returning officer under section 47 or who become entitled to vote under section 79. — Advance vote

Comment: See Recommendation 50. Compare with s. 66 (1) of the Municipal Elections Act and s. 44 (1) of the Election Act, 1984.

(2) The council of a municipality may by by-law passed before nomination day provide for the holding by the returning officer of additional advance votes for the same purpose provided in subsection (1). — Additional advance vote

Comment: Compare with s. 66 (2) of the Municipal Elections Act.

(3) The returning officer, with the assistance of the advisory committee, if any, established under subsection 27 (1), shall provide as many voting places, and as many voting stations in a voting place, for an advance vote as he or she considers necessary and shall select locations that — Advance voting places

allow easy access to persons who are elderly or who have a physical disability or a mobility impairment.

Comment: See Recommendations 54 and 60. Compare with s. 66 (4) of the Municipal Elections Act and s. 44 (2) of the Election Act, 1984.

(4) The returning officer shall appoint a deputy returning officer and vote clerk for each voting station provided under subsection (3) and may appoint for any voting place or station under this section such other election officers as he or she is permitted to appoint for a voting place or station under section 13. — D.R.O. and vote clerk, etc.

Comment: Compare with s. 66 (4) of the Municipal Elections Act.

(5) Except as otherwise provided in this section, sections 13, 14 and 15 apply with necessary modifications to the election officers appointed under subsection (4). — Application of ss. 13, 14 and 15

(6) The advance voting stations shall be open from 11 o'clock in the morning until 8 o'clock in the evening on each day that an advance vote is held. — Time of advance vote

Comment: See Recommendation 52. Compare with s. 66 (3) of the Municipal Elections Act and s. 44 (3) of the Election Act, 1984.

(7) Immediately after the close of the advance vote on each day it is held, the deputy returning officer shall prepare and deliver to the returning officer a list of the names of all persons who have voted, showing in each case the number of the voting division in which the elector is entered in the voters' list, and the returning officer shall, at the request of any candidate, furnish him or her with a copy of this list. — List of persons voting

Comment: Compare with s. 66 (5) of the Municipal Elections Act and s. 45 (2) of the Election Act, 1984.

(8) Upon receiving the list prepared under subsection (7), the returning officer shall, — Duties of returning officer on receiving list

(a) make an entry in the voters' list to be supplied to each deputy returning officer on voting day opposite the name of each elector whose name appears in that list and whose vote has been received at an advance vote, showing that such elector has voted; or

(b) make a certificate in the prescribed form for each voting division, showing the name and address of each elector listed in the voters' list for such voting division who has voted at an advance vote, and shall furnish this certificate before the opening of the voting station on voting day to the deputy returning officer of the voting division, and the deputy returning officer shall before opening the voting station make an entry in the voters' list supplied to him or her, opposite the name of each elector whose name appears on the certificate, showing that such elector has voted.

Comment: Compare with s. 66 (6) of the Municipal Elections Act and s. 45 (3) of the Election Act, 1984.

Sealing of box

(9) Immediately after the close of the advance vote on each day it is held, the deputy returning officer and any candidate or scrutineer present who desires to do so shall affix his or her seal to the ballot box in such a manner that it cannot be opened or any ballots be deposited in it without breaking the seals and the deputy returning officer shall immediately deliver it, along with all other election documents used at the advance vote, personally to the returning officer for safe keeping.

Comment: Compare with s. 66 (7) of the Municipal Elections Act.

Opening of ballot boxes and counting of votes for advance vote

(10) On voting day for an election, the deputy returning officer shall, at the hour fixed for the close of voting and in the presence of such of the candidates or their scrutineers or the scrutineers appointed by the council or school board, open the ballot boxes for the advance vote and proceed to count the votes.

Comment: Compare with s. 66 (8) of the Municipal Elections Act and s. 45 (5) of the Election Act, 1984.

Application

(11) Except as otherwise provided in this section, the provisions of this Act relating to procedure on voting day, counting of the votes and the reporting of the results of the vote apply with necessary modifications to voting under this section.

Comment: Compare with s. 66 (8) of the Municipal Elections Act and s. 45 (6) of the Election Act, 1984.

Voting Day Hours

Time of vote

76.-(1) Except as provided by subsection (2), the voting stations at every election shall be open on voting day from 11 o'clock in the morning until 8 o'clock in the evening.

Comment: See Recommendation 52. Compare with s. 52 of the Municipal Elections Act and s. 40 (1) of the Election Act, 1984.

When voting not commenced or interrupted

(2) If, for any reason, voting at a voting station is not commenced at the proper time or is interrupted during voting hours, the returning officer may,

(a) extend the closing time; or

(b) authorize the voting to resume on the following day or, if not possible, on the next possible day at 11 o'clock in the morning and to continue from day to day, if necessary,

until the voting station has been open with free access to the electors for the total number of hours stipulated in subsection (1).

Comment: Compare with s. 69 of the Municipal Elections Act and s. 40 (4) of the Election Act, 1984.

Arrangements where vote resumption authorized

(3) Where the closing time is extended or the resumption and continuance of voting are authorized under subsection (2), the returning officer shall make such arrangements as he or she considers advisable for the conduct of the vote, including notice to the affected electors, the safeguarding of the ballot boxes and all election documents and the counting of the votes.

Comment: Compare with s. 69 (2) of the Municipal Elections Act.

Not open to question

(4) The arrangements made by the returning officer under under subsection (3), in good faith, shall not be open to question, or be quashed, set aside or declared invalid on account of their unreasonable or supposed unreasonableness.

Comment: Compare with 69 (3) of the Municipal Elections Act.

Notice to L.G.E.O.

(5) The returning officer shall notify the Local Government Elections Officer of any arrangements made under this section and the reason for those arrangements within a reasonable time after the arrangements are in fact made.

Comment: Compare with s. 40 (4) of the Election Act, 1984.

Procedure on Voting Day

Attendance of D.R.O. and vote clerk at voting station

77.-(1) The deputy returning officer and vote clerk shall attend at their voting station at least thirty minutes before the hour fixed for opening the voting station.

Comment: Compare with s. 53 (1) of the Municipal Elections Act and s. 46 (1) of the Election Act, 1984.

Inspection of election materials before voting station opened

(2) Any scrutineers present during the thirty minutes before the opening of the voting station are entitled to inspect the ballots and all other materials relating to the vote and to have the ballots counted in their presence.

Comment: Compare with s. 53 (2) of the Municipal Elections and s. 46 (2) of the Election Act, 1984.

D.R.O. to show box empty, then seal it

(3) The deputy returning officer immediately before opening the voting station shall show the empty ballot box to any persons present and shall then lock the box and place his or her seal upon it in such manner as to prevent its being opened without breaking the seal.

Comment: Compare with s. 54 of the Municipal Elections Act and 46 (3) of the Election Act, 1984.

Placement of ballot box

(4) Except as provided in subsection 28 (3) and subsection (5), the deputy returning officer shall then place and keep the ballot box on a desk, counter or table or otherwise position it above floor level in full view of all present and shall keep the box locked and sealed until it is required to be opened for the counting of votes under section 93.

Comment: Compare with s. 54 of the Municipal Elections Act and s. 46 (4) of the Election Act, 1984.

When ballot box may be moved

(5) The ballot box may be moved inside the voting place by the deputy returning officer and vote clerk to facilitate voting by an elector, who is elderly or who has a physical disability or a mobility impairment, but where the box is so moved it may be accompanied by any scrutineer present and a record of any such action and any objection

taken by a scrutineer to it shall be made on the voters' list opposite the name of the elector.

Comment: See Recommendation 54. Compare with s. 46 (5) of the Election Act, 1984.

Duties of D.R.O. on request to vote

78.-(1) Where a person enters the voting station and requests a ballot, the deputy returning officer shall proceed as follows:

1. The deputy returning officer shall ascertain that the name of this person or a name apparently intended for it is entered in the voters' list for the voting division or that this person is entitled to vote under a certificate issued by the returning officer under section 47 or 73 and the vote clerk shall, on the record of voters, delete the name of the person.

2. The vote clerk shall indicate on the record of voters opposite the person's name the numerical order in which the person was given a ballot.

3. If the deputy returning officer is satisfied that this person is the person designated in the voters' list or in a certificate mentioned in paragraph 1 and is otherwise entitled to vote and if no candidate or scrutineer objects to voting by this person, the deputy returning officer shall initial the back of a ballot, with the initials so placed that when the ballot is folded they can be seen without opening it and shall deliver the ballot to this person.

4. If voting by this person is objected to by any candidate or scrutineer, the deputy returning officer shall enter the objection or cause it to be entered on the record of voters maintained by the vote clerk by writing opposite the name of this person the words "Objected to by ...[name of candidate on whose behalf the objection was made]" and the deputy returning officer shall require the person in respect of whom the objection was made to take the prescribed oath.

5. If the deputy returning officer is not satisfied that this person is the person designated in the voters' list or in a certificate mentioned in paragraph 1 and is otherwise entitled to vote,

although no candidate or scrutineer has objected, the deputy returning officer may require this person to take the prescribed oath.

6. If this person is required to take the oath and refuses to do so, the deputy returning officer shall enter or cause to be entered opposite the name of this person on the record of voters maintained by the vote clerk the words "Refused to be sworn" or "Refused to affirm" according to the fact and a ballot shall not be delivered to this person.

7. If this person takes the oath, the deputy returning officer shall enter or cause to be entered opposite this person's name on the record of voters maintained by the vote clerk the word "Sworn" or "Affirmed" according to the fact, shall initial the back of the ballot, with the initials so placed that when the ballot is folded they can be seen without opening it, and shall deliver the ballot to this person.

8. The deputy returning officer may, and upon request shall, either personally or through the vote clerk, explain to the elector as concisely as possible the procedure for voting.

Comment: Compare with s. 55 (1) of the Municipal Elections Act and ss. 47 and 50 of the Election Act, 1984.

Elector in voting place at closing

(2) Every elector qualified to vote at a voting station who is inside the voting place at the time fixed for closing the voting stations is entitled to vote.

Comment: Compare with s. 55 (2) of the Municipal Elections Act.

Entry of name on voters' list by D.R.O.

79.-(1) If a person representing himself or herself to be an elector applies to a deputy returning officer at a voting station for a ballot and his or her name does not appear on the voters' list or in a certificate issued under section 47 or 73 as entitled to vote at the voting station, he or she is entitled to have his or her name entered on this voters' list and to receive a ballot and to vote if he or she completes a certificate, in duplicate, in the prescribed form and otherwise establishes his or her identity to the satisfaction of the deputy returning officer.

Comment: See Recommendation 22. Compare with s. 56 (1) of the Municipal Elections Act.

(2) If an elector applies to a deputy returning officer at a voting station for a ballot and the information relating to the school support designation or the school board language section election choice of the elector as set out in the voters' list or in a certificate issued under section 47 is incorrect, the elector is entitled to have his or her designation or choice corrected on the voters' list and to receive a ballot and to vote accordingly if he or she completes a certificate, in duplicate, in the prescribed form and otherwise establishes his or her entitlement to vote in the manner he or she requests to the satisfaction of the deputy returning officer.

Correction of school support, etc., information on voters' list by D.R.O.

Comment: See Recommendations 22 and 23.

(3) The deputy returning officer shall enter or cause to be entered on the record of voters maintained by the vote clerk the name and address of the person who is voting by virtue of a certificate completed in accordance with subsection (1) and then opposite the name of this person the words "voted by certificate" and the authority for the certificate.

Entry of name on record of voters by D.R.O.

Comment: Compare with s. 56 (2) of the Municipal Elections Act.

(4) The deputy returning officer shall correct or cause to be corrected on the record of voters maintained by the vote clerk the school support designation or school board language section election choice of the elector who is voting by virtue of a certificate completed in accordance with subsection (2) and then opposite the name of this elector the words "voted by certificate" and the authority for the certificate.

Correction of school support designation, etc., on record of voters

(5) The deputy returning officer shall enclose one copy of any certificate completed under this section in a separate envelope and the other copy in another separate envelope.

Copies of certificates to be kept in separate envelopes

Comment: See Recommendation 23.

80. Where an elector entitled to vote at a voting station requests a ballot and it appears that another person has voted as such elector or that an entry has been made in the voters' list in error that this elector has voted, if the elector takes an oath in the prescribed form and otherwise establishes his or her identity to the satisfaction of the deputy returning officer, he or she is entitled to receive a ballot and the deputy returning officer shall enter or cause to be entered on the record of voters maintained by the vote clerk the name and address of this elector.

Where it appears person voted in place of elector, etc.

Comment: Compare with s. 57 of the Municipal Elections Act and s. 47 (4) of the Election Act, 1984.

81. No inquiry shall be made of an elector who is required to take the oath under section 78 or 80 except with respect to the matters required to be stated in the oath or to ascertain if he or she is the person intended to be designated in the voters' list.

Inquiry

Comment: Compare with s. 58 of the Municipal Elections Act.

82. Upon receiving a ballot from a deputy returning officer, the elector shall,

Procedure on receipt of ballot

(a) immediately proceed to the voting screen and then and there, using a pencil or pen, indicate the candidate of his or her choice or his or her position on any by-law or question, as the case may be, by marking the circle or circular space provided to the right of the candidate's name, or the position on the by-law or question, on the ballot with a clear, consistent mark, such as an "X";

(b) then fold the ballot so as to conceal the name of the candidates or the position on the by-law or question and the marks upon the face of it and so as to expose the initials of the deputy returning officer;

(c) then leave the voting screen without delay, and without showing the face of the ballot to anyone, or so displaying it as to make known how he or she has marked it; and

(d) then return the ballot so folded to the deputy returning officer.

Comment: See Recommendation 63. Compare with s. 59 of the Municipal Elections Act and ss. 48 (1) and (2) of the Election Act, 1984.

Duty of D.R.O. on return of the ballot

83.-(1) Upon the return of a ballot by an elector, the deputy returning officer, without unfolding the ballot, or in any way disclosing the names of the candidates or the positions on the by-law or question or the marks made by the elector, shall verify his or her own initials, and at once deposit the ballot in the ballot box in the presence of all persons entitled to be present and then present in the voting station, and the elector shall immediately leave the voting station.

Comment: Compare with s. 60 (1) of the Municipal Elections Act and s. 48 (3) of the Election Act, 1984.

Ballot taken from voting station

84. An elector who has received a ballot shall not take it out of the voting station and any elector who leaves without returning the ballot to the deputy returning officer forfeits the right to vote and the deputy returning officer shall enter or cause to be entered opposite the name of the elector on the record of voters maintained by the vote clerk the words "Forfeited Vote" and the reason for this entry.

Comment: Compare with s. 61 (1) of the Municipal Elections Act and s. 52 of the Election Act, 1984.

Declined ballot

85. An elector who has received a ballot and returns it to the deputy returning officer, declining to vote, forfeits the right to vote and the deputy returning officer shall immediately write the word "Declined" upon the back of the ballot and preserve it to be returned to the returning officer and shall enter or cause to be entered opposite the name of the elector on the record of voters maintained by the vote clerk the same word.

Comment: Compare with s. 61 (1) of the Municipal Elections Act and s. 53 of the Election Act, 1984.

Cancelled ballot

86. A ballot that,

(a) has been improperly printed;

(b) has been inadvertently dealt with in such a manner that it cannot be used; or

(c) has been issued to an elector who has marked it other than how he or she intended to mark it or for any reason objects to it and returns it to the deputy returning officer, requesting another,

may be replaced with another ballot by the deputy returning officer who shall immediately write the word "Cancelled" upon the back of the first ballot and preserve it to be returned to the returning officer and shall enter or cause to be entered opposite the name of the elector on the record of voters maintained by the vote clerk the same word and the reason for cancelling the ballot.

Comment: Compare with s. 61 (2) of the Municipal Elections Act and s. 54 of the Election Act, 1984.

87.-(1) Subject to section 88, while an elector is at a voting screen to mark his or her ballot, no other person shall be allowed at the voting screen or to be in a position from which he or she can see how the elector marks his or her ballot. — Elector to mark ballot in private

Comment: Compare with s. 62 of the Municipal Elections Act.

(2) No person shall interfere or attempt to interfere with an elector in a voting station, or obtain or attempt to obtain at a voting station information as to how an elector is about to vote or has voted. — Interference with elector

Comment: Compare with s. 95 (2) of the Municipal Elections Act and s. 42 (3) of the Election Act, 1984.

(3) Subject to sections 28 and 88, an elector shall not show his or her ballot, once marked, to any person so as to indicate how he or she has voted. — Voter not to show ballot

Comment: Compare with s. 95 (5) of the Municipal Elections Act and s. 42 (4) of the Election Act, 1984.

(4) No person shall, directly or indirectly, induce or attempt to induce an elector to show his or her ballot, once marked, to any person so as to indicate how he or she has voted. — Inducing elector to show ballot

Comment: Compare with s. 95 (4) of the Municipal Elections Act and s. 42 (5) of the Election Act, 1984.

(5) No person shall disclose any information obtained at a voting station as to how an elector at the voting station is about to vote or has voted or whether an elector forfeited his or her vote or declined to vote. — Disclosing voting information

Comment: Compare with s. 95 (3) of the Municipal Elections Act and s. 42 (6) of the Election Act, 1984.

(6) In any legal proceedings no person may be required to state how or for whom he or she has voted or whether he or she voted in an election. — No person required to disclose vote

Comment: Compare with s. 95 (6) of the Municipal Elections Act and s. 42 (7) of the Election Act, 1984.

88.-(1) On the request of any elector who is unable to read or who is blind or who has a physical disability or a mobility impairment and therefore prevented from voting under the other provisions of this Act, the deputy returning officer shall assist the elector to the voting screen or, if the elector making the request takes an oath as to his or her inability to vote without assistance, shall afterwards assist the elector at the voting screen by marking his or her ballot in the manner directed by the elector in the presence of the vote clerk and of no other person, and place the ballot in the ballot box. — Elector having disability, etc.

Comment: Compare with s. 63 (1) of the Municipal Elections Act and s. 55 (1) of the Election Act, 1984.

(2) The deputy returning officer shall either assist an elector mentioned in subsection (1) in the manner provided in that subsection or, at the request of any such elector who has taken the prescribed oath and is accompanied by a friend, shall permit the friend to accompany the elector to the voting screen and there mark the election ballot for the elector. — Ballot marked by friend

Comment: Compare with s. 63 (2) of the Municipal Elections Act and s. 55 (2) of the Election Act, 1984.

(3) Any friend who is permitted to mark the ballot of an elector under subsection (2) shall first be required to take the prescribed oath that he or she will keep secret how the elector voted. — Oath of friend

Comment: Compare with s. 63 (3) of the Municipal Elections Act and s. 55 (3) of the Election Act, 1984.

(4) No person shall be allowed to act as the friend of more than one elector mentioned in subsection (1) at any voting station, other than a voting station established under section 28. — May act as friend once only

Comment: Compare with s. 66 (4) of the Municipal Elections Act and s. 55 (4) of the Election Act, 1984.

(5) The deputy returning officer shall enter or cause to be entered opposite the name of the elector on the record of voters maintained by the vote clerk the fact that and the reason why the ballot was marked by him or her or by a friend of the elector. — Entry on record of voters

Comment: Compare with s. 55 (5) of the Election Act, 1984.

89.-(1) Subject to subsection 13 (9) and subsection (2), where neither the deputy returning officer nor the vote clerk understands the language spoken by an elector or where the elector is deaf, the elector has the right to the assistance of an interpreter who, after taking the prescribed oath, may translate any necessary declarations, documents or lawful questions put to the elector and the answers, but, if an interpreter is not immediately available, the elector shall, until a suitable interpreter does become available, be refused a ballot. — When language spoken by elector not understood

Comment: Compare with s. 64 of the Municipal Elections Act and s. 56 of the Election Act, 1984.

(2) The elector may provide his or her own interpreter, but, if the elector is not able to do so, the deputy returning officer, after consultation with the returning officer, shall, where possible, arrange, at the expense of the municipality or locality, that an interpreter be provided. — Providing interpreter

(3) The deputy returning officer shall enter or cause to be entered opposite the name of the elector on the record of voters maintained by the vote clerk the fact that and the reason why the elector required the assistance of an interpreter or the elector was refused a ballot, as the case may be, under this section. — Entry on record of voters

90.-(1) In addition to any elector in the process of voting, the only persons permitted to remain in a voting station during the time the voting station remains open and at the counting of the votes are the Local Government Elections Officer, the returning officer, the deputy returning officer, the vote clerk, any other election officer — Who may remain in voting station

appointed to serve at the voting station, any candidate and not more than one scrutineer for each candidate at any one time, and any scrutineer appointed by the council or a school board in relation to any by-law or question.

(2) Every person in attendance at a voting station or at the counting of the votes shall maintain and assist in maintaining the secrecy of the voting. Secrecy of proceedings

Comment: Compare with s. 95 (1) of the Municipal Elections Act s. 42 (2) of the Election Act, 1984.

91. No material or literature of any nature whatsoever designed to promote or oppose, directly or indirectly, the campaign of any candidate or of any supporter or opponent of a position on a by-law or question at issue in the election shall be displayed, and no speech of any nature whatsoever intended for the same purpose shall be made, inside or within the immediate vicinity of the voting place on voting day. No campaign literature or speech in or near voting place

Comment: Compare with s. 65 (2) of the Municipal Elections Act.

Counting the Votes

92. Immediately after the close of the vote, the deputy returning officer shall, Duties of D.R.O. after close of vote

(a) place all the cancelled, declined and unused ballots in separate envelopes and seal the envelopes;

(b) seal the envelopes in which the certificates issued under sections 47, 73 and 79, respectively, were enclosed; and

(c) count the number of electors who appear on the record of voters maintained by the vote clerk to have voted and enter that number at the bottom of the record and sign his or her name after that entry.

Comment: Compare with s. 70 of the Municipal Elections Act and s. 57 (1) of the Election Act, 1984.

93.-(1) After complying with section 92, the deputy returning officer shall, in the presence and in full view of the persons entitled to be present, open the ballot box and proceed to count the number of votes for each candidate and, Counting of votes

if applicable, for each position on a by-law or question submitted to the electors, giving full opportunity to those present to examine each ballot and observe the procedure.

Comment: Compare with s. 71 (1) of the Municipal Elections Act and s. 57 (1) of the Election Act, 1984.

(2) In counting the votes, the deputy returning officer shall follow the rules established by the Commission respecting the validity of ballots. — Validity of ballots to be adjudged by Commission rules

Comment: See Recommendation 67.

94.-(1) A candidate or a scrutineer at a voting station may object to a ballot or to the counting of votes in any ballot in whole or in part on the ground that the ballot or those votes should be rejected under section 93 and the deputy returning officer at the voting station shall decide the objection, subject to review on a recount or in a proceeding questioning the validity of the election. — Objection by candidate, etc.

Comment: Compare with s. 72 (1) of the Municipal Elections Act and s. 57 (4) of the Election Act, 1984.

(2) The deputy returning officer shall list all objections under subsection (1) to the counting of ballots or of votes in any ballot and number such objections and shall place the number of an objection on the back of the ballot objected to and initial the number. — Objections to be listed

Comment: Compare with s. 72 (2) of the Municipal Elections Act and s. 57 (5) of the Election Act, 1984.

95. The deputy returning officer shall count all votes cast at his or her voting station that are not rejected and shall keep an account of the number of votes so cast and allowed for each candidate and for each position on a by-law or question. — How votes to be counted

Comment: Compare with s. 73 of the Municipal Elections Act and s. 58 (1) of the Election Act, 1984.

96. After counting the votes at his or her voting station, the deputy returning officer shall place in separate envelopes, — Ballots to be placed in separate envelopes

(a) all used ballots that have not been objected to and have been counted in whole or in part;

(b) all used ballots that have been objected to but which have been counted in whole or in part;

(c) all rejected ballots; and

(d) all ballots used but unmarked,

and seal the envelopes.

Comment: Compare with s. 74 of the Municipal Elections Act and s. 58 (1) of the Election Act, 1984.

D.R.O. to endorse envelopes

97. The deputy returning officer shall endorse every envelope prepared by him or her under subsection 47 (7), subsection 74 (4), subsection 79 (5), clause 92 (a) or section 96 so as to indicate its contents and any candidate or scrutineer present may write his or her name across the flap of any of the envelopes and may also affix his or her seal.

Comment: Compare with s. 75 of the Municipal Elections Act and s. 58 (2) of the Election Act, 1984.

Oath of vote clerk

98. The vote clerk, immediately after the completion of the counting of the votes, shall take the prescribed oath.

Comment: Compare with s. 76 of the Municipal Elections Act.

Statement of the Vote and Return of Materials to Returning Officer

Statement of the vote

99.-(1) The deputy returning officer shall complete a prescribed statement of the vote, in duplicate, accounting for the number of,

(a) ballots received from the returning officer;

(b) votes given for each candidate;

(c) votes given for and against a by-law or question;

(d) used ballots that have not been objected to and have been counted;

(e) ballots that have been objected to in whole or in part but which have been counted;

(f) rejected ballots;

(g) cancelled ballots;

(h) ballots used but unmarked;

(i) declined ballots;

(j) unused ballots;

(k) electors whose ballots have been marked by the deputy returning officer or by a friend under sections 28 or 88.

Comment: Compare with s. 77 (1) of the Municipal Elections Act and s. 59 (1) of the Election Act, 1984.

Statements to be signed by D.R.O., etc.

(2) The statements prepared under subsection (1) shall be signed by the deputy returning officer and the vote clerk and may be signed by any candidate or scrutineer present.

Comment: Compare with s. 77 (3) of the Municipal Elections Act and s. 59 (1) of the Election Act, 1984.

Disposition of original statement

(3) The original statement shall be enclosed in a prescribed envelope and delivered to the returning officer as provided in section 102.

Comment: Compare with s. 77 (2) of the Municipal Elections Act and s. 59 (2)(a) of the Election Act, 1984.

Disposition of duplicate statement

(4) The duplicate statement shall be attached to the record of voters maintained by the vote clerk.

Comment: Compare with s. 77 (2) of the Municipal Elections Act.

Certificate of result of vote

100. The deputy returning officer shall complete a prescribed certificate of the number of ballots counted, including those that have been objected to, for each candidate or for each position on a by-law or question, as the case may be, and of the number of rejected ballots and unmarked ballots and shall provide a copy of the certificate, if requested to do so, to any candidate or scrutineer present.

Comment: Compare with s. 77 (4) of the Municipal Elections Act and s. 60 of the Election Act, 1984.

What to be placed in ballot box

101.-(1) The deputy returning officer shall place in the ballot box the voters' list, the record of voters, the ballot envelopes and all other documents or envelopes collected or used at the voting station during the election, except,

(a) the original statement of the vote;

(b) one of the envelopes prepared by him or her under subsection 79 (5);

(c) the oath of the vote clerk taken under section 98; and

(d) if applicable, the oath of the vote clerk or special messenger who is authorized under section 102 to deliver the ballot box and accompanying documents to the returning officer,

and shall then lock and seal the ballot box.

Comment: Compare with s. 78 (1) of the Municipal Elections Act and s. 61 of the Election Act, 1984.

Candidate or scrutineer may affix seal

(2) Any candidate or scrutineer present may affix his or her seal to the ballot box.

Comment: Compare with s. 62 (2) of the Election Act, 1984.

D.R.O. to deliver ballot box to returning officer

102.-(1) The deputy returning officer shall, except where otherwise directed by the returning officer, immediately deliver the sealed ballot box and the documents listed in subsection 101 (1) personally to the returning officer.

Comment: Compare with s. 78 (2) of the Municipal Elections Act and s. 62 (1) of the Election Act, 1984.

Oath of D.R.O.

(2) Immediately afterwards, the deputy returning officer shall take the prescribed oath and shall personally deliver it or send it by registered mail to the returning officer.

Comment: Compare with s. 78 (3) of the Municipal Elections Act and s. 62 (1) of the Election Act, 1984.

(3) If the deputy returning officer is unable personally to deliver the ballot box and accompanying documents, the deputy returning officer shall entrust them to the vote clerk, or, where the vote clerk is unable to act, to some other person chosen as special messenger by the deputy returning officer, for the purpose of delivering them to the returning officer.

Delivery of ballot box by vote clerk or special messenger

Comment: Compare with s. 78 (4) of the Municipal Elections Act and s. 62 (1) of the Election Act, 1984.

(4) The vote clerk or special messenger shall, before delivering the ballot box and accompanying documents, take the prescribed oath to do so and the deputy returning officer shall write on the oath, or on a ticket attached to it, the name of the person to whom the box and documents were entrusted and shall take a receipt for them.

Oath of vote clerk or special messenger

Comment: Compare with s. 78 (4) of the Municipal Elections Act and ss. 62 (1) and (4) of the Election Act, 1984.

(5) Immediately afterwards, the vote clerk or special messenger shall, except where otherwise directed by the returning officer, personally deliver the ballot box and accompanying documents to the returning officer and shall take before the returning officer the prescribed oath.

Delivery to returning officer

Comment: Compare with s. 78 (4) of the Municipal Elections Act and s. 62 (4) of the Election Act, 1984.

(6) Any candidate or scrutineer is entitled to be present when the ballot box and accompanying documents are delivered to the returning officer.

Right of candidate or scrutineer to be present

Comment: Compare with s. 78 (5) of the Municipal Elections Act and s. 62 (4) of the Election Act, 1984.

(7) Subject to section 75, a deputy returning officer, after the close of the vote, shall not under any circumstances take, or allow to be taken, the ballot box to any place except the office of the returning officer, or to such other ballot box place as the returning officer has in writing directed.

Where D.R.O. to take

Comment: Compare with s. 78 (6) of the Municipal Elections Act.

Official Addition

Safekeeping of box and documents

103.-(1) The returning officer, upon the receipt of a ballot box, and the documents listed in subsection 101 (1), shall take every precaution for their safekeeping and for preventing any other person from having access to them, and shall immediately on receipt of the ballot box seal it with his or her own seal in such a way that it cannot be opened without breaking the seal, and that any other seals affixed to it are not effaced or covered.

Comment: Compare with s. 80 (1) of the Municipal Elections Act and s. 63 of the Election Act, 1984.

Envelope to be sent to assessment commissioner

(2) The returning officer shall deliver or mail the envelope referred to in clause 101 (1)(b) to the assessment commissioner at such time as may be prescribed by regulation.

Comment: See Recommendation 23.

Conduct of official addition

104.-(1) The returning officer, after receiving all of the ballot boxes and the documents listed in subsection 101 (1), shall, without opening any of the ballot boxes, conduct, in the presence of any candidate or scrutineer then present, the official addition of the votes by adding up the total number of votes for each candidate and the total number of votes for each of the affirmative and negative positions on any by-law or question, as taken from the original statement of the vote for each voting station.

Comment: Compare with s. 79 (1) of the Municipal Elections Act and s. 64 (1) of the Election Act, 1984.

Adjournment of official addition

(2) The returning officer may adjourn the official addition to a future day and hour and so on from time to time but not in the aggregate to exceed fourteen days,

(a) if any of the ballot boxes or the documents listed in subsection 101 (1) have not been received from the voting stations;

(b) if any of the documents mentioned in subsection 101 (1) have in error been omitted from or placed in the ballot box; or

(c) if for any reason the returning officer cannot ascertain the meaning of the original statement of the vote.

Comment: Compare with s. 79 (3) of the Municipal Elections Act and s. 64 (2) of the Election Act, 1984.

(3) Where the returning officer adjourns the official addition under subsection (2), the returning officer shall immediately notify the Local Government Elections Officer who may issue such directions as he or she considers advisable. — L.G.E.O. to be notified of adjournment

Comment: Compare with s. 40 (4) of the Election Act, 1984.

(4) After adding up the total number of votes under subsection (1), the returning officer shall complete the prescribed declaration of election results. — Declaration of election results

Comment: Compare with s. 79 (2) of the Municipal Elections Act.

(5) The declaration prescribed under subsection (4) shall provide, with respect to an election, for the disclosure of, — Contents of declaration, etc.

(a) the number of electors who were eligible to vote;

(b) the number of electors who voted;

(c) the full name or names of the candidate or candidates who were elected, by the vote, to office, the office to which the candidate was elected and the number of votes the candidate received;

(d) the full name or names of the candidate or candidates who were not elected, by the vote, to office, the office to which the candidate was not elected and the number of votes the candidate received;

(e) the full name or names of the candidate or candidates who were elected, by acclamation, to office, the office to which the candidate was elected and the date on which the candidate was elected;

(f) the wording of a by-law or question, as it appeared on the ballot, and the number of votes for each of the affirmative and negative positions on the by-law or question; and

(g) such other information as, in the opinion of the Commission, may be necessary to assist it in the effective execution of its powers and duties under this Act,

and the declaration, once completed, shall bear the seal of the municipal corporation and the signature of the returning officer, as witnessed by a person other than a candidate or scrutineer.

Public announcement of election results

(6) Subject to subsection (7), the returning officer shall, at noon on the Thursday following voting day, in the office of the returning officer, publicly announce the results of the election, including any tied votes which will require a recount under section 111, as revealed by the declaration completed under subsection (4), and then post in some conspicuous place in the office the original declaration and, within a reasonable time afterwards but no later than seven days after the public announcement under this subsection, send a copy of the declaration to the Commission.

Comment: Compare with s. 79 (2) of the Municipal Elections Act.

Announcement delayed

(7) Where the official addition is adjourned under subsection (2), the public announcement under subsection (5) shall be made no later than 48 hours after the official addition is resumed and completed.

Opening box when documents omitted from or placed in box in error, etc.

105.-(1) Where any document mentioned in subsection 101 (1) is in error omitted from or placed in the ballot box, or where the returning officer considers it necessary to ascertain the meaning of an original statement of the vote, the returning officer may open the ballot box in the presence of the deputy returning officer concerned, and having corrected the error or after having ascertained the meaning of the statement, as the case may be, the box shall be resealed by the deputy returning officer in the presence of the returning officer and by the returning officer.

Comment: Compare with s. 80 (2) of the Municipal Elections Act.

Where D.R.O. fails to deliver statement

(2) If a deputy returning officer has not delivered or caused to be delivered the original statement of the vote for his or her voting station, the returning officer shall after notifying the candidates or scrutineers, who may be present, open the ballot box for the station for the purpose of counting the votes and shall count the votes in the same manner as provided in section 93.

Comment: Compare with s. 80 (3) of the Municipal Elections Act.

106.-(1) If a ballot box for a voting station has been destroyed or lost or, for any other reason, has not been received by the time of the official addition, the returning officer shall ascertain the cause and, if the original statement of the vote or a certificate of the result of the vote, or copies of them, cannot be procured, the returning officer shall ascertain, by such credible evidence as he or she is able to obtain, the total number of votes given for each candidate at the voting station and for the affirmative or negative position on any by-law or question, and may summon any deputy returning officer, vote clerk, scrutineer or other person to appear before him or her, at a time and place to be named by him or her, with all necessary papers and documents, and the returning officer shall notify the candidates of the intended proceedings and may examine any person so summoned on the matter in question. Procedure where ballot box lost, etc.

Comment: Compare with s. 81 of the Municipal Elections Act and s. 65 of the Election Act, 1984.

(2) Any proceedings under subsection (1) shall be held and completed within fourteen days after voting day. Time limit

PART VI

EFFECT OF IRREGULARITIES

Irregularities not to offset result

107. No election shall be declared invalid,

(a) by reason of any irregularity on the part of the returning officer or revising officer or in any of the proceedings preliminary to the vote;

(b) by reason of a failure to hold a vote at any place appointed for holding a vote;

(c) by reason of non-compliance with the provisions of this Act as to the taking of the vote, as to the counting of the votes or as to limitations of time; or

(d) by reason of any mistake in the use of the prescribed forms,

if it appears to the court having cognizance of the matter that the election was conducted in accordance with the principles of this Act and that the irregularity, failure, non-compliance or mistake did not affect the result of the election.

Comment: Compare with s. 94 of the Municipal Elections Act and s. 67 of the Election Act, 1984.

PART VII

RECOUNTS

Recount Officers

Recount officer

108.-(1) Subject to subsections (2) and (3), the clerk of a municipality is the recount officer for elections within the municipality or a part of it.

Comment: See Recommendation 65.

Recount officer in regional chairman elections

(2) For elections of the chairman of a regional municipality, the clerk of the area municipality with the greatest number of electors shall be the recount officer for the election.

Comment: See Recommendation 65.

Recount officer in police village elections

(3) For elections of trustees of a police village, the clerk of the municipality in which the police village is located shall be the recount officer for the election and where the police village is located in two or more municipalities the clerk of the municipality having the largest number of electors of the police village shall be the recount officer for the election.

Comment: See Recommendation 65.

Recount officers in school board elections

R.S.O. 1980, c. 129

(4) The returning officers of municipalities to which clauses 59 (25)(a) and (30)(a) and clause 113 (21)(a) of the Education Act refer shall be recount officers for the purposes of an election under this Act.

Comment: See Recommendation 65.

Where the recount officer unable or unwilling to act

109.-(1) Where the recount officer of the municipality has participated in the actual counting of the ballots for a voting station in the election or, for any reason, is unwilling or unable to conduct a recount arising as a result of the election, the recount officer shall immediately notify the Local Government Elections Officer who, upon being so notified, shall appoint the recount officer of another municipality, who is willing and able to act, as the recount officer for that election.

Comment: See Recommendation 65.

(2) Subsection (1) does not apply where the recount does not involve the examining and counting of ballots for the voting station in respect of which the recount officer, when acting as the returning officer, participated in the actual counting of the ballots. — Exception

110.-(1) The recount officer shall be responsible for the proper preparation for and conduct of a recount in the election and, for this purpose, shall, with the assistance of the Commission, direct the training of any election officers appointed by him or her under this section and shall supervise their work. — Duty of recount officer

(2) The recount officer may appoint assistant recount officers and recount assistants to assist him or her in the performance of his or her duties and may provide for such clerical and other assistance as is necessary for this purpose. — Assistants

Comment: See Recommendation 66.

(3) No person shall be appointed an assistant recount officer or recount assistant under subsection (2) who has participated in the actual counting of the ballots for a voting station in the election. — Disqualification

Comment: See Recommendation 66.

(4) Subsection (3) does not apply where the recount does not involve the examining and counting of ballots for the voting station in respect of which the person who is to be appointed an assistant recount officer or recount assistant under subsection (2) participated in the actual counting of the ballots. — Exception

(5) The recount officer may, in writing, delegate to the assistant recount officers appointed under subsection (2) such of his or her statutory rights and duties in relation to the preparation for and conduct of a recount as he or she considers necessary, but such delegation does not preclude the continued exercise of those rights and performance of those duties by the recount officer. — Delegation by recount officer

(6) Where the number of such electors so warrants, the recount officer may appoint such suitable interpreters as he or she considers necessary to attend at the recount to assist electors who are deaf or who do not understand or speak the language in which proceedings at the recount are conducted. — Appointment of interpreters

(7) The recount officer may require the assistance of constables and other persons to aid him or her in maintaining peace and order at the recount and may appoint for this purpose as many constables as he or she considers necessary. — Assistance of constables

(8) Section 14 applies with necessary modifications to election officers appointed under this section. — Application of s. 14

111.-(1) Every recount officer, assistant recount officer, recount assistant, interpreter, constable, scrutineer and other person authorized to attend and serve at a recount shall, before starting his or her duties, take an oath in the prescribed form. — Oath of recount officer and others

(2) The recount officer may administer any oath required by this Part, and assistant recount officers may administer any such oath except an oath to be taken by the recount officer. — Who may administer oaths

Recount Procedures

112.-(1) In an election under this Act, if, on the official addition of the votes, — Automatic recounts

(a) two or more candidates nominated for the same office have an equal number of votes where both or all of these candidates cannot be declared elected to the office; or

(b) the votes for the affirmative and negative positions on a by-law or question are equal,

the recount officer shall, after the tied vote has been publicly announced, immediately appoint a time and place to hold a recount of the votes cast for those candidates or for the positions on the by-law or question.

Comment: See Recommendation 73.

(2) The time appointed by the recount officer for a recount under subsection (1) shall be no later than seven days after the public announcement of the results of the election under section 104. — When recount to be held

113.-(1) In an election under this Act for the office of member of the council of a municipality or regional municipality or of a school board or public utilities' commission, as the case may be, where, on the official addition of the votes, the number of votes separating, — Automatic recounts on request

(a) the candidate who was declared elected or, for an office to which more than one person may be elected, who was declared elected with the least number of votes; and

(b) any other candidate who was not declared elected,

is less than one half of one vote for each voting division in the election for the office, if the candidate so requests in writing, the recount officer shall hold a recount of the votes for the office.

Comment: See Recommendation 72.

When request for recount to be made

(2) A request by a candidate for a recount under subsection (1) shall be made to the recount officer not later than seven days after the public announcement of the results of the election under section 104.

Comment: See Recommendation 72.

Recount officer to appoint time and place for recount

(3) Upon receiving a request for a recount under this section, the recount officer shall appoint a time and place for the conduct of the recount.

When recount to be held

(4) The time appointed by the recount officer for a recount under subsection (3) shall be no earlier than ten days but no later than twenty days after the request for the recount was received.

Recount resolution by council, etc.

114.-(1) Following an election under this Act for the office of member of the council of a municipality or regional municipality or of a school board or public utilities' commission, as the case may be, where a recount of the votes cast for the office is considered to be in the public interest, the council, board or commission may pass a resolution requiring the recount officer to hold a recount for the office.

Comment: See Recommendation 74. Compare with s. 83 (2) of the Municipal Elections Act.

When resolution to be passed

(2) A resolution for a recount under subsection (1) shall be passed no later than thirty days after the public announcement of the results of the election under section 104.

Comment: See Recommendation 70.

(3) Where a resolution for a recount is passed under subsection (1), the recount officer shall appoint a time and place for the recount. — Recount officer to appoint time and place for recount

(4) The time appointed by the recount officer for a recount under subsection (3) shall be no earlier than ten days but no later than twenty days after the passage of the resolution under subsection (1) — When recount to be held

115.-(1) Where, in any election under this Act, an elector has reasonable grounds for believing that, — Application for recount by elector

(a) the votes have been improperly counted or any ballot has been improperly rejected;

(b) an incorrect statement of the number of votes cast for any candidate or for the affirmative or negative position on any by-law or question has been made; or

(c) the votes have been improperly added up,

the elector may apply to a judge of the District Court who shall determine whether a recount should be held by the recount officer.

Comment: See Recommendation 75. Compare with s. 83 (2) of the Municipal Elections Act and s. 70 of the Election Act, 1984.

(2) An application for a recount under subsection (1) shall be accompanied by, — Affidavit and deposit to accompany application, etc.

(a) an affidavit or affidavits setting out the grounds for the recount and the facts in support of those grounds; and

(b) a deposit in the sum of $100 as security for the costs in connection with the application,

and shall be commenced no later than thirty days after the public announcement of the results of the election under section 104.

Comment: See Recommendations 70 and 75. Compare with s. 83 (2) of the Municipal Elections Act.

(3) Any affidavit under clause (2)(a) shall be confined to facts within the personal knowledge of the person making the affidavit or to other evidence that this person could give if testifying as a witness in court. — Contents of affidavit

(4) A deposit under clause (2)(b) shall be in the form of cash or in the form of a money order or certified cheque made payable to the local registrar of the District Court, or in any combination of those forms. — Form of deposit

(5) Except where otherwise provided in this section and subject to the Rules of Civil Procedure, the practice and procedure of the District Court apply to an application commenced under this section. — Practice and procedure; O. Reg. 560/84

(6) Copies of the notice of application, the application for a recount and any affidavit in support of the application shall be served by the applicant, — Parties to be served

(a) where the application concerns an election to office, upon each candidate for that office; and

(b) in any case, upon the recount officer and the Local Government Elections Officer.

(7) Upon reading the affidavits and the transcripts of any cross-examinations relating to the application and upon hearing the representations, if any, of the applicant and any person who has been served with the application, the judge, if satisfied that there are sufficient factual grounds for a recount, shall order that a recount be held by the recount officer and may determine which ballot boxes, if any, shall be opened for the purpose of the recount and, in any event, shall immediately notify the recount officer in writing of his or her decision. — Disposition of application, etc.

Comment: Compare with s. 83 (2) and (2a) of the Municipal Elections Act and s. 70 (1) of the Election Act, 1984.

(8) Where the judge has ordered a recount under subsection (7), the recount officer, upon being so notified, shall appoint a time and place to hold the recount. — Where recount ordered

Comment: See Recommendation 76.

When recount to be held

(9) The time appointed by the recount officer for a recount under subsection (8) shall be no earlier than ten days but no later than twenty days following the date on which the recount officer was notified of the order to hold a recount under subsection (7).

Costs of application

(10) The costs of an application for a recount under this section are in the discretion of the judge hearing the application who may order by whom, to whom, in what manner and in what proportion, if at all, the costs shall be paid.

Comment: See Recommendation 75. Compare with s. 86 (1) of the Municipal Elections Act and s. 77 (1) of the Election Act, 1984.

Awarding of costs

(11) The judge may fix the amount of the costs of the application for a recount or order that they be taxed by an assessment officer on a scale following as nearly as may be the tariff of costs of the District Court.

Comment: Compare with s. 86 (2) of the Municipal Elections Act and s. 77 (2) of the Election Act, 1984.

Payment of deposit

(12) Where costs are directed to be paid by the applicant, the money deposited as security for costs under subsection (2) shall be paid out to the party entitled to such costs, so far as necessary.

Comment: Compare with s. 86 (4) of the Municipal Elections Act.

Notice of recount

116. After appointing a time and place for a recount under this Part, the recount officer shall give at least six days notice in writing of the time and place of the recount to,

(a) the candidate who requested the recount, the council or school board or public utilities' commission which passed the resolution for the recount, or the elector who applied to the Court for the recount, as the case may be;

(b) the candidates for the office which is the subject of the recount;

(c) where the recount officer is not the returning officer of the municipality, the returning officer of the municipality;

(d) where the recount concerns the election of chairman of a regional municipality or of trustees of a police village or of members of a school board in the circumstances described under subsection 10 (2) or (3) of the Act or subsection 59 (25) or (30) or 113 (21) of the Education Act, as applicable, the clerk of any other municipality who was the returning officer for the vote to be recorded in his or her municipality for the election; and

(e) the Local Government Elections Officer,

as applicable.

Comment: Compare with s. 83 (2) of the Municipal Elections Act and s. 72 (1) of the Election Act, 1984.

Attendance of recount officer

117.-(1) The recount officer shall attend the recount with the ballot boxes and all documents relating to the election.

Comment: Compare with s. 83 (3) of the Municipal Elections Act and s. 72 (4) of the Election Act, 1984.

Where recount officer not returning officer

(2) Where the recount officer is not returning officer of the municipality, the returning officer of the municipality, or a person appointed by the returning officer, shall attend the recount with the ballot boxes and all documents relating to the election.

Regional chairman, police village and school board elections

R.S.O. 1980, c. 129

(3) Where the recount concerns the election of chairman of a regional municipality or of trustees of a police village or of members of a school board in the circumstances described under subsection 10 (2) or (3) of the Act or under subsection 59 (25) or (30) or 113 (21) of the Education Act, as applicable, the clerk of any other municipality who was the returning officer for the vote to be recorded in his or her municipality for the election, or a person appointed by the clerk, shall attend the recount with the ballot boxes and all documents relating to the election.

Who must be present

118.-(1) The recount officer and any returning officer or clerk who is required to attend the recount under section 117, or the person appointed by him or her, shall be present at the recount.

Comment: Compare with s. 83 (4) of the Municipal Elections Act and s. 72 (3) of the Election Act, 1984.

(2) Each candidate for an office where the recount relates to that office and, where applicable, the elector who applied for the recount are entitled to be present and to be represented by counsel and to have present and be represented by his or her scrutineer appointed for that purpose, and, where the recount relates to a by-law or question, such persons as the council or school board may appoint as scrutineers are entitled to be present, but no other person, except with the permission of the recount officer, is entitled to be present at the recount. Who may be present

Comment: Compare with s. 83 (4) of the Municipal Elections Act and s. 72 (3) of the Election Act, 1984.

(3) Sections 15, 19 and 20 apply with necessary modifications to scrutineers appointed under subsection (2). Application of ss. 15, 19 and 20

119.-(1) Where a recount relates to the election of a candidate, the recount shall be of the votes cast respectively, What ballots involved in recounts

(a) where section 112 applies, for the two or more candidates who have an equal number of votes;

(b) where section 113 applies, for the candidate declared elected when only one is to be elected or, in the case of an office to which more than one is to be elected, for the candidate who received the lowest number of votes of those declared elected by the returning officer and for the defeated candidate or candidates who received enough votes for the same office to fall within the margin of votes prescribed by that section; or

(c) in all other cases, for the candidate declared elected when only one is to be elected or, in the case of an office to which more than one is to be elected, for the candidate who received the lowest number of votes of those declared elected by the returning officer and for the defeated candidate who received the highest number of votes for the same office,

unless any other candidate in writing requires the votes cast for him or her to be recounted or the votes cast for him or her to be added again.

Comment: Compare with s. 83 (5) of the Municipal Elections Act.

(2) Notwithstanding subsection (1), the recount officer may conduct a recount of the votes cast for any other candidate whose election or right to any other office may be affected in any way by the recount conducted under subsection (1).

Recount officer may conduct recount, etc., of votes cast for other candidates

Comment: Compare with s. 83 (6) of the Municipal Elections Act.

120.-(1) At the time and place appointed for the recount, and in the presence of those persons who are entitled to be present and who have attended, the recount officer shall add again the votes from the statements returned to the returning officer by the deputy returning officers, or shall count again all the ballots received by the returning officer from the deputy returning officers and the number of votes counted at the election, or both, as the recount officer considers appropriate, and for this purpose shall open the sealed envelopes containing,

Procedure at recount

(a) the used ballots that were not objected to and were counted,

(b) the ballots that were objected to but were counted,

(c) the rejected ballots,

(d) the cancelled ballots,

(e) the ballots that were used but were unmarked,

(f) the declined ballots, and

(g) the unused ballots.

Comment: Compare with s. 83 (7) of the Municipal Elections Act and s. 72 (5) of the Election Act, 1984.

(2) Subject to sections 121 and 122, the recount officer, in conducting the recount, shall follow the rules established by the Commission respecting the validity of ballots, and shall verify or correct the statement of the vote for each voting station.

Comment: See Recommendation 67. Compare with s. 83 (8) of the Municipal Elections Act and s. 73 of the Election Act, 1984.

121.-(1) Where a candidate, a representative of the candidate or a scrutineer objects to a ballot or to the counting of votes in any ballot, he or she may request that the recount officer refer the ballot to a judge of the District Court for determination of the validity of the objection. — Reference to judge

Comment: See Recommendation 68.

(2) No reference under subsection (1) shall be held until the recount is otherwise completed. — When reference to be held

(3) Where a reference is requested under subsection (1) the recount officer shall, — Procedure where reference requested

(a) write the number of the voting station on the back of and initial any disputed ballots that are the subject of the reference and seal them in a separate envelope clearly marked so as to indicate its contents;

(b) arrange with the local registrar of the District Court for a time and place for the reference to be held and give at least six days notice in writing of the time and place of the reference to the parties to the recount;

(c) make suitable arrangements for the safekeeping of any ballots that are not the subject of the reference and any documents relating to the election that are not relevant to the reference.

(4) The recount officer shall attend the reference with the envelope containing the disputed ballots that are the subject of the reference and with any documents relating to the election that are relevant to the reference. — Attendance of recount officer at reference

(5) At the time and place set for the reference, and in the presence of those persons who were entitled to be present at the recount and who have attended the reference, the judge shall determine the validity of any objection to a ballot or to the counting of votes in any ballot made under subsection (1) and for this purpose shall open the sealed envelope containing the disputed ballots. — Procedure at reference

(6) In determining the validity of an objection under this section, the judge shall consider the rules established by the Commission respecting the validity of ballots and any relevant provision of this Act and shall examine any documents relating to the election that are relevant to the issue and shall hear the representations, if any, of the parties to the reference. — The same

(7) If for any reason it appears desirable to do so, the judge, upon the application of any party to the recount, may hear such evidence as he or she considers necessary for the purpose of making a full and proper determination of the validity of an objection under this section, and, in addition, if it appears that, as a result of the determination of any objection, any of the candidates for any office will be declared to have received the same number of votes as any other candidate or candidates who were parties to the recount, the judge, upon the request of the recount officer or the application of any party to the recount, may hear such evidence as he or she considers necessary to determine who was elected to that office. — The same

Comment: Compare with s. 83 (9) of the Municipal Elections Act.

(8) If any party to the reference requests the judge to do so, the judge shall initial any ballots the validity of which, notwithstanding any determination to the contrary made by the judge under this section, is disputed by the party and seal the disputed ballots in a separate envelope clearly marked so as to indicate its contents. — Distinguishing disputed ballots

Comment: Compare with s. 74 (1) of the Election Act, 1984.

(9) Upon completion of the reference, the judge shall, — Procedure on completion of reference

(a) announce the result of the reference to the persons present at the reference; and

(b) except as provided by subsection (8), seal or cause to have sealed all the disputed ballots in their original envelope; and

(c) return the envelope referred to in clause (b), along with any documents relating to the election that were examined by him or her during the course of the reference, to the custody of the recount officer.

Comment: Compare with s. 83 (10) of the Municipal Elections Act and s. 74 (2) of the Election Act, 1984.

(10) The judge shall certify in writing to the recount officer the result of the reference, unless, during the two days following the completion of the reference, the judge receives a notice of appeal as provided in section 132. — When judge to certify reference result

Comment: Compare with s. 84 of the Municipal Elections Act and s. 76 (1) of the Election Act, 1984.

(11) Upon receipt of the judge's certificate, the recount officer shall take whatever steps remain to complete the recount. — Recount officer to complete recount

(12) Subject to subsection (13), the costs of the reference shall be borne by the municipality, school board, public utilities' commission or other local board, as the case may be, whose election the recount concerns. — Costs of reference

Comment: See Recommendation 71.

(13) Where the judge finds that any objection is frivolous, vexatious or completely unfounded, the judge may order that the costs of the reference be paid by the person who made the objection to any party to the reference in whatever manner and in whatever proportion as the judge may consider just. — The same

Comment: See Recommendation 71.

(14) Upon the expiry of the time for appeal from a decision of the judge, if no appeal has been taken, the judge shall return or cause to be returned the envelope described in subsection (8) to the custody of the recount officer. — Where no appeal, envelope to be returned

122. Notwithstanding section 121, if any party to the recount requests the recount officer to do so, the recount officer shall write the number of the voting station on the back of and initial any disputed ballots and seal them in a separate envelope clearly marked so as to indicate its contents. — Distinguishing disputed ballots

Comment: Compare with s. 74 (1) of the Election Act, 1984.

123. Upon completion of the recount, the recount officer shall, Procedure on completion of recount

(a) announce the result to the persons present at the recount; and

(b) except as provided by section 122, seal or cause to have sealed all the ballots in their original envelopes and all the original statements in a separate envelope clearly marked so as to indicate its contents.

Comment: Compare with s. 83 (10) of the Municipal Elections Act and s. 74 (2) of the Election Act, 1984.

124.-(1) Where the recount officer is the returning officer of the municipality, the recount officer shall certify in writing the result of the recount, unless, during the two days following the completion of the recount, the recount officer receives a notice of appeal as provided in section 132. Where recount officer also returning officer, when recount result to be certified

Comment: Compare with s. 84 of the Municipal Elections Act and s. 76 (1) of the Election Act, 1984.

(2) Following certification of the result of the recount under subsection (1), the returning officer shall then, Declaration of result by returning officer after recount, etc.

(a) declare the candidate having the greatest number of votes to be elected or certify to the council or school board, as the case may be, the result of the vote with respect to a by-law or question, as applicable; and

(b) notify the Local Government Elections Officer in writing of the result of the recount.

Comment: Compare with s. 84 of the Municipal Elections Act and s. 76 (2) of the Election Act, 1984.

125.-(1) Where the recount officer is not the returning officer of the municipality, the recount officer shall certify in writing the result of the recount, unless, during the two days following the completion of the recount, the recount officer receives a notice of appeal as provided in section 132. Where recount officer not returning officer, when recount result to be certified

Comment: Compare with s. 84 of the Municipal Elections Act and s. 76 (1) of the Election Act, 1984.

(2) Upon receipt of the recount officer's certificate, the returning officer shall then, — Declaration of result by returning officer after recount, etc.

(a) declare the candidate having the greatest number of votes to be elected or certify to the council or school board, as the case may be, the result of the vote with respect to a by-law or question, as applicable; and

(b) notify the Local Government Elections Officer in writing of the result of the recount.

Comment: Compare with s. 84 of the Municipal Elections Act and s. 76 (2) of the Election Act, 1984.

126.-(1) Subject to subsection 121 (7), in the case of a tied vote for candidates for any office for which one person only is to be elected, or for which the holding of any other office is to be determined as a result of a recount, the successful candidate shall be determined by lot conducted by the recount officer. — Tied votes

Comment: Compare with s. 85 (1) of the Municipal Elections Act and s. 76 (2) of the Election Act, 1984.

(2) For the purposes of this section, "lot" means the method of determining the successful candidate by placing the names of the candidates on equal size pieces of paper placed in a box, and with the name of the successful candidate drawn by the recount officer. — Method of conducting lot

Comment: Compare with s. 85 (2) of the Municipal Elections Act.

127. The costs of the recount, except as otherwise provided in section 121, shall be borne by the municipality, school board, public utilities' commission or other local board, as the case may be, whose election the recount concerned.

Comment: See Recommendation 71. Compare with s. 86 of the Municipal Elections Act and s. 77 of the Election Act, 1984.

Where recount officer also returning officer, if no appeal, envelopes to be returned

128.-(1) Where the recount officer is the returning officer of the municipality, upon the expiry of the time for appeal from a decision of the recount officer, if no appeal has been taken, the recount officer, if applicable, shall return or cause to be returned all of the envelopes described in clause 123 (b) to the custody of the clerk referred to in subsection 117 (3).

Comment: Compare with s. 87 (1) of the Municipal Elections Act.

Documents not required on appeal

(2) If an appeal is taken from the decision of the recount officer on the recount, the recount officer, if applicable, shall return or cause to be returned such of the envelopes of ballots and such of the envelopes of ballots and such of the original statements of the vote described in clause 123 (b) as are not required for the appeal to the custody of the clerk referred to in subsection 117 (3).

Comment: Compare with s. 87 (2) of the Municipal Elections Act.

Where recount officer not returning officer, if no appeal, envelopes to be returned

129.-(1) Where the recount officer is not the returning officer of the municipality, upon the expiry of the time for appeal from a decision of the recount officer, if no appeal has been taken, the recount officer shall return or cause to be returned all of the envelopes described in clause 123 (b) to the custody of the returning officer or the clerk referred to in subsection 117 (3), as the case may be.

Comment: Compare with s. 87 (1) of the Municipal Elections Act.

Documents not required on appeal

(2) If an appeal is taken from the decision of the recount officer on the recount, the recount officer shall return or cause to be returned such of the envelopes of ballots and such of the original statements of the vote described in clause 123 (b) as are not required for the appeal to the custody of the returning officer or the clerk referred to in subsection 117 (3), as the case may be.

Comment: Compare with s. 87 (2) of the Municipal Elections Act.

Right to sit pending recount

130. Any candidate declared elected is entitled to sit on the council, school board or local board notwithstanding that a request or application for a recount has been filed or a resolution for a recount has been passed, but where the recount determines that some other person was elected, that person is, notwithstanding that an appeal is pending, entitled to take his or her seat and to sit and vote until the appeal is disposed of.

Comment: Compare with s. 83 (12) of the Municipal Elections Act.

Decisions not affected

131. The decisions of a council, school board or local board reached with the participation of a member or members who is or are subsequently declared not to be entitled to sit on the council or board shall not in any way be affected on the grounds of the participation of such member or members.

Comment: Compare with s. 83 (13) of the Municipal Elections Act.

Appeal from Decision on Reference or Recount

Appeal from decision of judge or recount officer

132.-(1) Any party may appeal from the decision of the judge on the reference or of the recount officer on the recount, as the case may be, by giving notice in writing during two days following the completion of the reference or the recount to the other parties concerned and to the judge or the recount officer of his or her intention to appeal, and he or she may by the notice limit the appeal to specified disputed ballots.

Comment: See Recommendation 66. Compare with s. 88 (1) of the Municipal Elections Act and s. 79 (1) of the Election Act, 1984.

Service of notice

(2) The notice may be served upon the other parties personally, or upon the solicitor who acted for the party at the reference before the judge or at the recount before the recount officer, personally or at his or her office, or as a judge of the Divisional Court may direct.

Comment: Compare with s. 88 (2) of the Municipal Elections Act and s. 79 (2) of the Election Act, 1984.

(3) Where the appeal is limited, the judge or recount officer shall forward, in the envelope provided for in subsection 121 (9)(b) or 123 (b), respectively, the ballots or statements of the vote that are the subject of the appeal, together with the notice of appeal and a certificate showing the findings of the judge or recount officer on the ballots or statements in dispute, by registered mail to the Registrar of the Supreme Court, but, if the appeal is not limited, the judge or recount officer shall forward all the ballots and other papers to the Registrar, and, in either case, the judge or recount officer shall await the result of the appeal before preparing the certificate under section 121, 124 or 125, as applicable.

Comment: Compare with s. 88 (3) of the Municipal Elections Act and s. 79 (3) of the Election Act, 1984.

Allowing copy of certificate of findings to party

(4) The judge or recount officer shall, upon request, allow each party to make a copy of the certificate of his or her findings before it is forwarded to the Registrar.

Comment: Compare with s. 79 (4) of the Election Act, 1984.

Appointment for hearing

(5) On receipt of the ballots or statements and notice, the Registrar shall immediately obtain an appointment from the Divisional Court for hearing the appeal and shall notify the parties or their solicitors of the time so appointed.

Comment: Compare with s. 88 (4) of the Municipal Elections Act and s. 79 (5) of the Election Act, 1984.

Procedure on appeal, certificate of result

(6) At the time appointed, one judge of the Divisional Court shall determine the objection pertaining to, or count again, in the same manner as the judge or recount officer was required to follow under section 120 or 121, respectively, the ballots or such of them as are the subject of appeal, or review the re-addition, as the case may be, and shall immediately certify in writing the decision of the Court to the judge or recount officer, whose duty it is to comply with the decision and to certify the result without delay.

Comment: Compare with s. 88 (5) of the Municipal Elections Act and s. 79 (6) of the Election Act, 1984.

Costs of appeal

(7) The judge of the Divisional Court may direct by whom, to whom, in what manner and in what proportion, if at all, the costs of the appeal shall be paid.

Comment: Compare with s. 88 (6) of the Municipal Elections Act and s. 79 (7) of the Election Act, 1984.

(8) The judge of the Divisional Court shall tax the costs of appeal. Taxation of costs

Comment: Compare with s. 79 (8) of the Election Act, 1984.

PART VIII

DISPOSITION OF ELECTION RECORDS

Disposition of ballots

133.-(1) The returning officer shall retain in his or her possession for ninety days from the date of an election all the ballots used in the election and, unless otherwise directed by an order of a judge having jurisdiction to inquire into the validity of the election, shall then destroy them in the presence of two witnesses, who shall make a statutory declaration that they witnessed their destruction, and this declaration shall be filed in the office of the returning officer.

Comment: Compare with s. 89 (1) of the Municipal Elections Act and ss. 83 and 84 of the Election Act, 1984.

Disposition of other documents

(2) Subject to subsection (1), the returning officer shall retain in his or her possession all oaths, nominations, qualification documents, statements of the vote, and other documents relating to an election until the successors to the persons elected at that election have taken office, and may then destroy them.

Comment: Compare with s. 89 (2) of the Municipal Elections Act and ss. 83 and 84 of the Election Act, 1984.

Inspection of documents

134.-(1) Subject to section 135, all documents relating to an election that are in the possession of the returning officer are public records and may be inspected by any person upon request at the office of the returning officer during normal business hours.

Comment: Compare with s. 85 (1) of the Elections Act, 1984 and s. 16 (1) of the Election Finances Act, 1986.

Extracts and copies

(2) Any person may make extracts from the documents referred to in subsection (1) and is entitled to copies of the documents upon payment for the preparation of the copies at such rate as is ordinarily charged for the preparation of copies of other documents in the office.

Comment: Compare with s. 85 (1) of the Elections Act, 1984 and s. 16 (2) of the Election Finances Act, 1986.

Not to be used for commercial solicitation

(3) No person, corporation or trade union shall use any of the information contained in any document in the possession of the returning officer for the purposes of commercial solicitation.

Comment: Compare with s. 16 (3) of the Election Finances Act, 1986.

135.-(1) No person shall be allowed to inspect the contents of a ballot box in the custody of the returning officer except under the order of a judge of the District Court. — Inspection of ballots

Comment: Compare with s. 90 (1) of the Municipal Elections Act and s. 85 (2) of the Election Act, 1984.

(2) The order may be made if the judge is satisfied, by affidavit or other evidence on oath, that the inspection is required for the purpose of instituting or maintaining a prosecution for an offence, or a corrupt practice, or for the purpose of an action questioning the election. — Order of judge

Comment: Compare with s. 90 (2) of the Municipal Elections Act and s. 85 (3) of the Election Act, 1984.

(3) The order may be made subject to such conditions as the judge thinks proper. — Conditions of order

Comment: Compare with s. 85 (3) of the Election Act, 1984.

(4) Subject to the order, the inspection shall take place under the immediate supervision of the returning officer, who shall be present at all times during the inspection. — Where inspection takes place

Comment: Compare with s. 85 (4) of the Election Act, 1984.

136. Where an order is made by a judge for the production by the returning officer of any document in his or her possession relating to an election, the production of it by the returning officer, in such manner as may be directed by the order, is evidence that the document relates to the election, and any endorsement appearing on any packet of ballots so produced is evidence that the contents are what they are stated to be by the endorsement. — Production of documents by returning officer

Comment: Compare with s. 91 of the Municipal Elections Act and s. 86 of the Election Act, 1984.

PART IX

VACANCIES

Filling vacancy after general election but before election year

137.-(1) Where a vacancy occurs in the office of,

(a) member of the council of a municipality;

(b) member of the council of a regional municipality where this office is required to be filled by the vote of the electors of an area municipality or the area municipalities; or

(c) member of a school board whose members are to be elected at elections required by law to be conducted by the same officers and in the same manner as elections of members of the council of a municipality,

in a year other than an election year or in an election year during the period following voting day for a general election, the council of the local or area or regional municipality or the school board, as the case may be, shall, within 60 days after the vacancy occurs, declare the office to be vacant and pass a by-law or resolution directing the returning officer with whom nominations for an office may be filed in an election governed by this Act to hold a by-election to fill the vacancy in accordance with Part X of this Act.

Comment: See Recommendation 83. Compare with s. 46 (1) of the Municipal Act.

The same

(2) Notwithstanding subsection (1), the council of a local or area or regional municipality or a school board, as the case may be, may by by-law or resolution provide that, where a vacancy occurs in the office of member of the council or of the board in a year other than an election year or in an election year during the period following voting day for a general election, the council or the board shall, within 60 days after the vacancy occurs, pass a by-law or resolution declaring the office to be vacant and,

(a) directing the returning officer with whom nominations for an office may be filed in an election governed by this Act to hold a by-election to fill the vacancy in accordance with Part IX of this Act, or

(b) authorizing an appointment to be made to fill the vacancy in accordance with,

(i) in the case of a council, section 138, and

(ii) in the case of a school board, Part VII or Part XI-A, as applicable, of the Education Act. R.S.O. 1980, c. 129

Comment: See Recommendation 85.

Limitation

(3) A by-law or resolution permitted under subsection (2) shall be passed within three months of the date of assumption of office for members of the council or the board following a general election and shall remain in force until the successors to the persons elected at that election have taken office.

Comment: See Recommendation 84.

Filling vacancy before general election in election year

(4) Where a vacancy occurs in the office of,

(a) member of the council of a municipality;

(b) member of the council of a regional municipality where this office is required to be filled by the vote of the electors of an area municipality or the area municipalities; or

(c) member of a school board whose members are to be elected at elections required by law to be conducted by the same officers and in the same manner as elections of members of the council of a municipality,

in an election year during the period preceding voting day for a general election, the council of the local or area or regional municipality or the school board, as the case may be, shall, within 60 days after the vacancy occurs, pass a by-law or resolution declaring the office to be vacant and,

(d) directing the returning officer with whom nominations for an office may be filed in an election governed by this Act to hold a by-election to fill the vacancy in accordance with Part X of the Act, or

(e) authorizing an appointment to be made to fill the vacancy in accordance with,

(i) in the case of a council, section 138, and

(ii) in the case of a school board, Part VII or Part XI-A, as applicable, of the Education Act,

but where the vacancy occurs less than 120 days prior to voting day for the general election in an election year the vacancy need not be filled.

Comment: See Recommendation 86. Compare with s. 46 (3) of the Municipal Act.

The same

(5) Where a direction is given in any judicial proceeding to hold a by-election to fill a vacancy on a council or school board and the direction is given less than 120 days prior to voting day for the general election in an election year, the vacancy need not be filled.

Comment: Compare with s. 46 (2) of the Municipal Act.

Notice to Commission

(6) Where a returning officer is directed under this section to hold a by-election to fill a vacancy in office, the returning officer shall notify the Commission in writing of this fact.

Filling vacancy by appointment

138.-(1) Where a vacancy occurs in the office of,

(a) member of the council of a municipality; or

(b) member of the council of a regional municipality where this office is required to be filled by the vote of the electors of an area municipality or the area municipalities,

and a by-law or resolution is passed under section 137 to authorize an appointment to be made to fill the vacancy in accordance with this section, the council of a local or area or regional municipality, as the case may be, at a meeting called for that purpose shall appoint a person who has consented to accept the office if he or she is appointed to fill the vacancy and,

(d) in the case of the office of local or area councillor, alderman or regional councillor, that person is a person qualified to hold office as a member of the council; and

(e) in the case of the office of chairman, mayor, reeve, deputy reeve or controller, that person is a member of the council at the time of appointment.

Comment: Compare with s. 45 (1) of the Municipal Act.

Where vote to be taken by clerk

(2) If more than one person is nominated for appointment to fill a vacancy under this section, a vote of the members of council shall be taken by the clerk at a regular meeting or at a special meeting called for the purpose.

Comment: Compare with s. 45 (2) of the Municipal Act.

Majority vote required

(3) A person nominated under this section who receives the votes of more than one-half the number of all members of council shall fill the vacancy for which the vote by council was held.

Comment: Compare with s. 45 (3) of the Municipal Act.

Procedure where no majority vote obtained

(4) Where a candidate for appointment under this section receiving the greatest number of votes cast does not receive more than one-half of the votes of all members of council, the candidate who received the fewest number of votes shall be excluded from the voting and the vote shall be taken again by the clerk, and if necessary more than once, excluding in each successive vote the candidate who received the fewest number of votes in the preceding vote, until the candidate receiving the greatest number of votes has also received more than one-half of the votes of the members of council present and voting.

Comment: Compare with s. 45 (4) of the Municipal Act.

The same

(5) Where votes cast in a vote under this section are equal for all the candidates,

(a) if there are three or more candidates nominated or remaining, the clerk shall by lot select one such candidate to be excluded from the subsequent voting; or

(b) if there are two candidates nominated or remaining, the tie shall be broken and the successful candidate to fill the vacancy shall be selected by lot conducted by the clerk.

Comment: Compare with s. 45 (5) of the Municipal Act.

(6) For the purpose of clause (5)(a), "lot" means the method of determining the candidate to be excluded by placing the names of the candidates on equal size pieces of paper placed in a box, and with the name of the candidate to be excluded drawn by the clerk. — Method of conducting lot

Comment: Compare with s. 45 (6) of the Municipal Act.

(7) For the purpose of clause (5)(b), "lot" means the method of determining the successful candidate to fill the vacancy by placing the names of the candidates on equal size pieces of paper placed in a box, and with the name of the successful candidate drawn by the clerk. — The same

Comment: Compare with s. 45 (6) of the Municipal Act.

(8) Where council appoints a person to fill a vacancy in the office under this section, the clerk shall notify the Commission in writing of this fact and indicate the full name of this person and the office to which he or she was appointed. — Notice to Commission

139. A person appointed or elected to an office under this Part shall hold office for the remainder of the term of the person whose place he or she is appointed or elected to fill. — Term of office

Comment: Compare with s. 47 of the Municipal Act.

PART X

BY-ELECTIONS

By-election

140.-(1) Where a by-election is required under this or any other Act to fill a vacancy in any office, the returning officer with whom nominations for an office may be filed in an election governed by this Act shall set the date of the nomination day which shall be within forty-five days of the day on which,

(a) a directive is given in any judicial proceedings;

(b) the council of the municipality passes a by-law; or

(c) the returning officer receives from the secretary of a school board notice,

that a by-election is required.

Comment: Compare with s. 92 (1) of the Municipal Elections Act.

Procedure

(2) Except where otherwise provided, the procedure and time periods that apply at a by-election shall be the same procedure and time periods that apply at a general election of the municipality.

Comment: Compare with s. 92 (2) of the Municipal Elections Act.

Voting day and advance vote

R.S.O. 1980, c. 409

(3) Subject to section 158 of the Public Health Act, voting day in a by-election shall be twenty-nine days after nomination day and the mandatory advance vote shall be ten days before voting day.

Comment: Compare with s. 92 (2) of the Municipal Elections Act

Voting

(4) The voting required to fill a vacancy in an office by by-election shall so far as possible be held in the same manner and by the same officers and take place at the same places, in so far as practicable, at which voting took place at the last general election.

Comment: Compare with s. 92 (3) of the Municipal Elections Act.

(5) The preliminary list to be used in the year in which a by-election is held shall be, List of electors

(a) where the by-election is held prior to the 3rd day of November, the voters' list prepared for an election held in the immediately preceding year in that voting division, but, if no election was held in such preceding year in that voting division, a list of electors prepared by the assessment commissioner based on the census conducted in that preceding year together with any revisions made to it as of the 30th day of September in such preceding year; or

(b) where the by-election is held on or after the 3rd day of November, a list of electors prepared by the assessment commissioner based on the census conducted in that year together with any revisions which have come to his or her notice as of the 30th day of September in that year,

provided that any list referred to in clause (a) or (b) shall be subject to revision as if it were a preliminary list of electors and sections 39 to 45 shall apply to it with necessary modifications to the printing or reproduction.

Comment: Compare with s. 92 (4) of the Municipal Elections Act.

(6) Where a, Rules for list of electors

(a) by-election is required under clause 62 (1)(a), 62 (2)(b), subsection 64 (4) or subsection 64 (6), the period during which a person may qualify as an elector for the office subject to election shall be the period of qualification specified under subsection 29 (1) and the period following such qualification period terminating on the Thursday following the voting day for the last general election;

(b) by-election is required under section 160, the period during which a person may qualify as an elector for the office subject to election shall be the period beginning thirty-four days prior to voting day and ending on voting day for the by-election;

(c) vacancy otherwise occurs and the council of the municipality or a school board for which the returning officer is required to hold elections requires an election to be held to fill the vacancy, the period during which a person may qualify as an elector for the office to be elected shall be the period beginning thirty-four days prior to voting day and ending on voting day for the by-election; and

(d) by-law or question is to be submitted to the electors, the period during which a person may qualify as an elector entitled to vote on the by-law or question, as the case may be, shall be the period beginning thirty-four days prior to voting day and ending on voting day for the by-election.

Certification of list

(7) The preliminary list for a by-election, when revised, shall be subject to certification by the revising officer under section 46 and to entry of names in the list under sections 47 and 79.

Comment: Compare with s. 92 (6) of the Municipal Elections Act.

Eligibility of member to be candidate for other office

(8) Where a vacancy occurs in any office and a by-election is to be held to fill that vacancy, a person holding any other office is not eligible to be a candidate for the vacant office unless he or she has, before nomination day for the by-election, filed with the returning officer a certified copy of his or her resignation from the office that he or she then holds along with evidence satisfactory to the returning officer that this resignation has been filed as required by the legislation governing the office that he or she then holds.

Comment: Compare with s. 92 (7) of the Municipal Elections Act.

Revision of partial list

(9) If election to the office for which a by-election is required is to be by ward, it is necessary to revise only that portion of the preliminary list applicable to such ward.

Comment: Compare with s. 92 (9) of the Municipal Elections Act.

Vacancy less than 120 days before voting day

(10) Notwithstanding anything in this or any other Act, a by-election shall not be held to fill a vacancy where the vacancy occurs less than 120 days prior to voting day for the general election in an election year.

Comment: See Recommendation 86. Compare with s. 92 (8) of the Municipal Elections Act.

141. Notwithstanding that a by-election becomes necessary, *meetings* of the council or school board may be held if a quorum of the council or school board is present. Council, etc. may meet notwithstanding vacancy

Comment: Compare with s. 93 of the Municipal Elections Act.

PART XI

CORRUPT PRACTICES AND OTHER OFFENCES: PENALTIES AND ENFORCEMENT

Voting when not qualified, etc.

142. Every person who, at an election,

(a) not being qualified to vote, votes;

(b) being qualified to vote, votes more times than he or she is authorized to vote by this Act; or

(c) votes in a voting station other than one in which he or she is entitled to vote by this Act,

is guilty of a corrupt practice and is liable to a fine of not more than $5,000, or to imprisonment for a term of not more than six months, or to both.

Comment: Compare with s. 96 of the Municipal Elections Act and s. 89 of the Election Act, 1984.

Improper voting by proxy

143. Every person who,

(a) appoints a proxy voter for reward or remuneration;

(b) induces or procures any elector by undue influence to appoint a proxy voter to vote at an election;

(c) unduly solicits or attempts to solicit from an elector an appointment as a proxy voter to vote at an election;

(d) having appointed a proxy voter to vote at an election, attempts to vote at the election otherwise than by means of this proxy voter while the proxy certificate is in force;

(e) knowingly appoints more than one person as a proxy voter; or

(f) having been appointed as a proxy voter at an election, votes or attempts to vote at the election under the authority of the proxy certificate when he or she knows or had reasonable grounds for supposing that his or her appointment has been cancelled or that the elector who made the appointment is no longer entitled to vote or is dead,

is guilty of a corrupt practice and is liable to a fine of not more than $5,000, or to imprisonment for a term of not more than six months, or to both.

Comment: Compare with s. 97 of the Municipal Elections Act and s. 90 of the Election Act, 1984.

Wilful miscount of ballots

144. Every deputy returning officer or vote clerk who wilfully miscounts the ballots or otherwise wilfully completes a false statement of the vote is guilty of a corrupt practice and is liable to a fine of not more than $5,000, or to imprisonment for a term of not more than six months, or to both.

Comment: Compare with s. 98 of the Municipal Elections Act and s. 91 of the Election Act, 1984.

Neglect of duties

145. Every election officer who refuses or neglects to perform any of the duties imposed upon him or her by this Act is guilty of an offence and on conviction is liable to a fine of not more than $5,000.

Comment: Compare with s. 99 of the Municipal Elections Act and s. 92 of the Election Act, 1984.

Offences relating to ballots

146. Every person who,

(a) without authority, supplies a ballot to any person;

(b) without authority, places in a ballot box anything other than the ballot given to him or her by the deputy returning officer;

(c) delivers to the deputy returning officer to be placed in the ballot box any paper other than the ballot given to him or her by the deputy returning officer;

(d) takes a ballot out of the voting station;

(e) without authority, is found to be in possession of, takes, opens or otherwise interferes with, a ballot box, a ballot or books or packet of ballots provided for use at, in use, or used for the purpose of an election;

(f) being a deputy returning officer, knowingly puts his or her initials on the back of any paper which purports to be or is capable of being used as, but which is not, a ballot at an election;

(g) being authorized by the returning officer to print the ballots for an election, prints more than he or she is authorized to print; or

(h) attempts to commit any offence mentioned in this section,

is guilty of a corrupt practice and is liable to a fine of not more than $5,000, or to imprisonment for a term of not more than six months, or to both.

Comment: Compare with s. 100 of the Municipal Elections Act and s. 93 of the Election Act, 1984.

False information to election officers

147. Every person who knowingly furnishes false or misleading information to any person who by this Act is authorized to act as an election officer is guilty of an offence and on conviction is liable to a fine of not more than $5,000, or to imprisonment for a term of not more than six months, or to both.

Comment: Compare with s. 101 of the Municipal Elections Act and s. 94 of the Election Act, 1984.

Inducing unqualified person to vote, etc.

148. Every person who,

(a) induces or procures any person to vote knowing that that person has no right to vote; or

(b) before or during an election knowingly publishes a false statement of the withdrawal of a candidate,

is guilty of a corrupt practice and is liable to a fine of not more than $5,000, or to imprisonment for a term of not more than six months, or to both.

Comment: Compare with s. 102 of the Municipal Elections Act and s. 94 of the Election Act, 1984.

149.-(1) Every person who, — Bribery;

(a) directly or indirectly, himself or herself or by any other person on his or her behalf, gives, lends or agrees to give or lend, or offers or promises any money or valuable consideration, or promises to procure or to endeavour to procure any money or valuable consideration to or for any elector, or to or for any person on behalf of any elector, or to or for any person in order to induce any elector to vote or refrain from voting, or corruptly does any such act on account of any elector having voted or refrained from voting at an election; or — bribing elector or procuring bribery by money

(b) directly or indirectly, himself or herself or by any other person on his or her behalf, gives or procures or agrees to give or procure, or offers or promises any office, place or employment, or promises to procure or to endeavour to procure any office, place or employment to or for any elector, or to or for any other person in order to induce any elector to vote or refrain from voting, or corruptly does any such act on account of any elector having voted or refrained from voting at an election; or — by gift or offer or promise of employment

(c) directly or indirectly, himself or herself or by any other person on his or her behalf, makes any such gift, loan, offer, promise, procurement or agreement, to or for any person, in order to induce that person to procure or endeavour to procure the election of any candidate, or the vote of an elector at an election; or — to induce anyone to procure election of candidate or endeavour to procure

(d) upon or as a result of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure the election of any candidate, or the vote of any elector at an election; or — receiving bribe to procure election of candidate

(e) advances or pays, or causes to be paid, money to or to the use of any other person, with the intent that such money or any part of it shall be spent in the commission of corrupt practices at an election, or who knowingly pays or causes to be paid money to any person in discharge or repayment of money wholly or partly spent in the commission of corrupt practices at an election; or — advancing money to be spent in corrupt practices

(f) directly or indirectly, himself or herself or by any other person on his or her behalf, on account of and as payment for voting or for having voted, or for illegally agreeing or having agreed to vote for any candidate at an election, or on account of and as payment for having illegally assisted or agreed to assist any candidate at an election, applies to that candidate for the gift or loan of any money or valuable consideration, or for any office, place or employment, or the promise of any office, place or employment; or

applying for money or employment in consideration of voting

(g) before or during an election, directly or indirectly, himself or herself or by any other person on his or her behalf, receives, agrees or contracts for any money, gift, loan or valuable consideration, office, place or employment, for himself or herself or any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at an election; or

receiving money, office, etc., for having voted

(h) after an election, directly or indirectly, himself or herself or by any other person on his or her behalf, receives any money or valuable consideration for having voted or refrained from voting, or from having induced any other person to vote or refrain from voting at an election; or

receiving money corruptly after election

(i) in order to induce a person to allow himself or herself to be nominated as a candidate, or to refrain from becoming a candidate, or to withdraw if he or she has become a candidate, gives or procures any office, place or employment, or agrees to give or procure or offers or promises to procure, or endeavours to procure any office, place or employment for that person, or for any other person,

giving or promising office to candidate to stand or withdraw

is guilty of bribery, and on conviction is liable to a fine of not more than $5,000, or to imprisonment for a term of not more than six months, or to both, and is subject to the disqualifications specified in sections 32 and 52.

Comment: Compare with s. 103 (1) of the Municipal Elections Act.

(2) The actual personal expenses of a candidate, his or her reasonable expenses for actual professional services performed, and genuine payments for the fair cost of printing and advertising and other lawful and reasonable expenses in connection with the election, incurred by the candidate in good faith and without any corrupt intent, shall be deemed to be expenses lawfully incurred, and the payment of them is not a contravention of this section. — Personal expenses of candidate

Comment: Compare with s. 103 (2) of the Municipal Elections Act.

(3) The returning officer shall furnish every deputy returning officer with at least two copies of this section, and the deputy returning officer shall post them in conspicuous places at the voting station. — Posting of provisions on bribery

Comment: Compare with s. 103 (3) of the Municipal Elections Act.

150. Every person who contravenes any of the provisions of this Act for which contravention no penalty is otherwise provided, or who contravenes the provisions of a regulation of the Commission made under section 66 or under subsection 47 (4) or 103 (2), is guilty of an offence and on conviction is liable to a fine of not more than $5,000. — General offence

Comment: Compare with s. 104 of the Municipal Elections Act and s. 96 of the Election Act, 1984.

151. For the purposes of section 52, where a candidate at an election is convicted of committing a corrupt practice, the presiding judge, before sentencing the candidate, shall make a finding on whether the act constituting in law a corrupt practice was committed with any corrupt intent. — Finding where candidate convicted of corrupt practice

Comment: Compare with s. 105 (2) of the Municipal Elections Act and s. 97 (2) of the Election Act, 1984.

PART XII

CONTESTED ELECTIONS

Validity of election, etc., determined by action

152.-(1) The validity of an election or of the election of any person to any office at an election or of the right of any person to hold any office subject to election or the issue whether any person is guilty of a corrupt practice respecting an election shall be tried and determined by an action commenced by issuing a statement of claim in the District Court in the county or district in which the municipality or the administrative or head office of the school board or local board is situated.

Comment: Compare with s. 106 (1) of the Municipal Elections Act, s. 98 (1) of the Election Act, 1984 and s. 44 (1) of the Municipal Act. See also s. 25 (1) of the Courts of Justice Act, 1984.

Penalties for corrupt practices

(2) Where the District Court determines that a person has committed a corrupt practice it may, in addition to any other penalty or order, impose the penalties provided for the commission of a corrupt practice under sections 142 to 148.

Comment: Compare with s. 106 (2) of the Municipal Elections Act and s. 98 (2) of the Election Act, 1984.

Who may commence action

(3) A candidate at an election or any elector qualified to vote at an election or the Attorney General, if the Attorney General considers that it is in the public interest that an action be commenced, may commence an action under this section.

Comment: Compare with s. 106 (3) of the Municipal Elections Act and s. 98 (3) of the Election Act, 1984.

Time for commencing action

(4) Except as provided for in subsections (5) and (6), no action shall be commenced after the expiration of 90 days following the date of the vote in an election.

Comment: Compare with s. 106 (4) of the Municipal Elections Act and s. 98 (4) of the Election Act, 1984.

(5) An action may be commenced to determine the validity of the right of any person to hold any office subject to election not later than the expiration of 90 days after the facts alleged to disqualify this person from holding office came to the knowledge of the person bringing the action. — The same

Comment: Compare with s. 44 (2) of the Municipal Act.

(6) Subsections (4) and (5) do not apply to the Attorney General who may commence an action under this section at any time. — Exception

Comment: Compare with s. 98 (4) of the Election Act, 1984.

153.-(1) Upon receipt of a statement of claim issued under section 152 the local registrar of the District Court shall send notice of the action by registered mail to the Attorney General, except where the Attorney General issued the statement of claim. — Local registrar to notify A.G.

Comment: Compare with ss. 98 (5) and (6) of the Election Act, 1984.

(2) The Attorney General shall notify the Commission of any action commenced under the authority of section 152, and shall also notify the returning officer of the jurisdiction to which the action relates. — A.G. to notify Commission and returning officer

Comment: Compare with s. 98 (7) of the Election Act, 1984.

(3) The returning officer, after receipt of a notification under subsection (2), shall immediately publish a notice of it in the prescribed form once in a newspaper having general circulation in the jurisdiction. — Publication of notice by returning officer

Comment: Compare with s. 98 (8) of the Election Act, 1984.

154.-(1) Where not otherwise provided in this Act and subject to the Rules of Civil Procedure, the practice and procedure of the District Court apply to an action commenced under section 152. — Practice and procedure

O.Reg. 560/84

(2) The action shall be tried by a judge without a jury. — Trial by judge alone

Comment: The same as s. 107 (3) of the Municipal Elections Act and s. 99 (2) of the Election Act, 1984.

155.-(1) The Attorney General, following receipt of the notice under subsection 153 (1) may apply to a judge of the District Court, or to the judge presiding at the trial, for leave to intervene in the action for the purpose of bringing any evidence before the court or for any other valid reason. — Intervention in action by A.G.

Comment: Compare with s. 100 (1) of the Election Act, 1984.

(2) Where the Attorney General applies prior to the trial for leave to intervene, the Attorney General shall file notice of the application in the office in which the action was commenced and shall serve copies of the notice on all parties. — Notice of application to be filed and served

Comment: Compare with s. 100 (2) of the Election Act, 1984.

(3) If the judge grants leave to intervene, the judge shall give directions as to appearance and procedure in respect of the Attorney General, including leave to subpoena witnesses to attend at trial, and afterwards, the Attorney General shall be served with all proceedings in the action. — Where leave granted

Comment: Compare with s. 100 (3) of the Election Act, 1984.

156.-(1) At the time of the commencement of an action, security shall be given on behalf of the plaintiff, other than the Attorney General, to be applied towards payment of all costs, charges and expenses, if any, that may become payable by the plaintiff, including the costs and charges of the returning officer incurred in the publication of notices in the jurisdiction in respect of the action or its proceedings. — Security for costs

Comment: Compare with s. 108 (1) of the Municipal Elections Act and s. 101 (1) of the Election Act, 1984.

(2) The security shall be in the amount of $1,000 and shall be given in accordance with the practice in cases where security for costs is available under the Rules of Civil Procedure. — The same; O.Reg. 560/84

Comment: Compare with s. 108 (2) of the Municipal Elections Act and s. 101 (2) of the Election Act, 1984.

157.-(1) An action abates on the death of a sole plaintiff or the survivor of several plaintiffs. — Abatement of action

Comment: The same as s. 109 (1) of the Municipal Elections Act and s. 103 (2) of the Election Act, 1984.

(2) The abatement of an action does not affect any liability for costs previously incurred. — Liability for costs

Comment: The same as s. 109 (2) of the Municipal Elections Act and s. 103 (2) of the Election Act, 1984.

(3) On the abatement of an action, notice of the abatement shall be given by the local registrar of the District Court in the prescribed form in the jurisdiction and any person who might have been a plaintiff may apply to a judge of the District Court or, during the trial, to the trial judge to be substituted as the sole plaintiff. — Substitution of plaintiff

Comment: Compare with s. 109 (3) of the Municipal Elections Act and s. 103 (3) of the Election Act, 1984.

158. Where a plaintiff is not qualified to be a plaintiff in an action under section 152, the action shall not on that account be dismissed if, within such time as a judge of the District Court or, during the trial, the trial judge allows for that purpose, another plaintiff is substituted and substitution shall be made on such terms and conditions as the judge considers proper. — Substitution for unqualified person

Comment: Compare with s. 110 of the Municipal Elections Act and s. 104 of the Election Act, 1984.

159.-(1) If, before or during the trial, — Death of defendant, etc., at or before trial

(a) the defendant dies; or

(b) the council or school board or local board declares that the seat is vacant; or

(c) the defendant gives notice to the court that he or she does not intend to oppose, or further oppose the action,

notice of this event shall be given by the local registrar of the District Court in the prescribed form in the jurisdiction.

Comment: Compare with s. 105 (1) of the Election Act, 1984.

(2) Within twenty days after notice is given in the jurisdiction under subsection (1), any person who might have been a plaintiff may apply to a judge of the District Court or, during the trial, to the trial judge to be admitted as a defendant to oppose the action, or so much of the action as remains undisposed or, and may be admitted accordingly, — Substituted as further defendant

either with the defendant, if there is a defendant, or in place of the defendant, and any number of persons not exceeding three may be so admitted.

Comment: Compare with s. 105 (2) of the Election Act, 1984.

Adjournment of trial

(3) If any of the events mentioned in subsection (1) happen during the trial, the court shall adjourn the trial in order that notice may be given in the jurisdiction.

When notice of intention not to oppose given

(4) The defendant who has given the notice under clause (1)(c) shall not be allowed to appear or act as a party against the action in any proceeding relating to it and shall not sit or vote on the council or school board or local board until the council or board has been informed of the judgment in the action, and the court shall report the giving of the notice to the council or board through the clerk of the municipality or the secretary of the school board or local board.

Comment: Compare with s. 104 (5) of the Election Act, 1984.

Declaration that election void

160.-(1) Where it is determined that a successful candidate is guilty of bribery or of a corrupt practice, the court may declare his or her election void and his or her office shall upon this declaration become vacant.

Comment: Compare with s. 111 (1) of the Municipal Elections Act and s. 106 (1) of the Election Act, 1984.

Unseating and seating of another candidate

(2) Where the election of any person is declared void, the court may order that he or she be removed from office and, if it is determined that any other person would have been elected but for the corrupt practice, that he or she be admitted to take his or her seat on the council or school board or local board or, if it is determined that no other person would have been elected, that a by-election be held.

Comment: Compare with s. 111 (2) of the Municipal Elections Act and s. 106 (2) of the Election Act, 1984.

Where corrupt practice affected election result

(3) Where it is determined that any person is guilty of bribery or of a corrupt practice and that the commission of the bribery or corrupt practice affected the result of the election, the court may declare the election void and direct that a by-election be held.

Comment: Compare with s. 111 (3) of the Municipal Elections Act and s. 106 (3) of the Election Act, 1984.

(4) Where it is determined that a person elected was not qualified or has become disqualified or has otherwise forfeited his or her seat, the court may order that he or she be removed from office and direct that a by-election be held. — Unseating of disqualified person

Comment: Compare with s. 106 (4) of the Election Act, 1984.

(5) Where it is determined that any act or omission of an election officer affected the result of an election, the court may declare the election void and direct that a by-election be held. — Where act or omission affected election result

Comment: Compare with s. 111 (4) of the Municipal Elections Act and s. 106 (5) of the Election Act, 1984.

(6) Where a by-election is to be held, the court may make such order as it considers just against any person who is found guilty of an offence or of bribery or a corrupt practice under this Act, for the compensation of candidates at the void election, not exceeding $5,000 per candidate. — Compensation of candidates where election void

Comment: Compare with s. 111 (5) of the Municipal Elections Act and s. 106 (6) of the Election Act, 1984.

(7) The local registrar of the court shall forward a copy of the judgment and the reasons for judgment to the Commission and to the returning officer of the jurisdiction. — Judgment to Commission and returning officer

Comment: Compare with s. 111 (6) of the Municipal Elections Act and s. 106 (7) of the Election Act, 1984.

161.-(1) If the court determines that a member was not properly elected, notwithstanding that an appeal from the decision is pending, he or she is not entitled to sit or vote on the council or school board or local board until the appeal is disposed of and the judgment of the court on appeal is received by the council or board, but where the court determines that some other person was elected or is entitled to the seat, that person is, notwithstanding that an appeal is pending, entitled to take the seat and to sit and vote until the appeal is disposed of and the judgment of the court on appeal is received by the council or board. — Where election set aside and appeal entered

Comment: Compare with s. 112 (1) of the Municipal Elections Act and s. 107 (1) of the Election Act, 1984.

(2) The decisions of a council or school board or local board reached with the participation of a member or members who is or are subsequently declared to be not entitled to sit on the council or board shall not in any way be affected on the grounds of the participation of such member or members.

Decisions of council or board not affected by reason of subsequent disqualification

Comment: Compare with s. 112 (2) of the Municipal Elections Act.

162. A by-election shall not be held until after the expiration of the time limited for appeal from the determination of the court that the election is void and, if an appeal is brought, the by-election shall not be held pending the appeal.

By-election not to be held pending appeal

Comment: Compare with s. 113 of the Municipal Elections Act and s. 108 of the Election Act, 1984.

163.-(1) An appeal lies from the judgment of the District Court to the Divisional Court in accordance with the Rules of Civil Procedure.

Appeal to Divisional Court

O.Reg. 560/84

Comment: Compare with s. 114 (1) of the Municipal Elections Act and s. 109 (1) of the Election Act, 1984.

(2) The Divisional Court may give any judgment that ought to have been pronounced or may grant a new trial for the purpose of taking evidence or additional evidence and may remit the case to the trial judge or to another judge and, subject to any directions of the Divisional Court, the case shall afterwards be proceeded with as if there had been no appeal.

Judgment or new trial

Comment: Compare with s. 114 (2) of the Municipal Elections Act and s. 109 (3) of the Election Act, 1984.

(3) An appeal lies from the decision of the trial judge to whom the case was remitted by the Divisional Court in accordance with the provisions of this section.

Appeal from decision on new trial

Comment: Compare with s. 114 (3) of the Municipal Elections Act and s. 109 (4) of the Election Act, 1984.

164.-(1) Any person elected may, at any time after the election and before it is contested under section 152, send by registered mail, or deliver to the returning officer a disclaimer in the prescribed form. — Disclaimer before election contested

Comment: Compare with s. 115 of the Municipal Elections Act.

(2) A person whose election is contested under section 152, unless it is contested on the ground of bribery or of a corrupt practice on his or her part, may, within one week after service on him or her of the statement of claim, send by registered mail, or deliver to, — Disclaimer after election contested

(a) the judge of the court,

(b) the plaintiff or his or her solicitor, and

(c) the returning officer of the jurisdiction,

a disclaimer in the prescribed form.

Comment: Compare with ss. 116 and 117 (1) of the Municipal Elections Act.

(3) On receiving the disclaimer, the returning officer shall immediately communicate it to the council or to the secretary of the school board or local board, as the case requires, and notify the Commission in writing of it. — Notice of disclaimer

Comment: Compare with s. 117 (1) of the Municipal Elections Act.

(4) A disclaimer under subsection (1) or (2) operates as a resignation from the office to which the person was elected. — Disclaimer as resignation

Comment: Compare with s. 117 (2) of the Municipal Elections Act.

(5) A disclaimer under subsection (1) or (2) does not affect the right of any person entitled to commence an action, or the status of any action commenced, under section 152, which action may be commenced, or continued, in the same manner as if the disclaimer had not been made, but does relieve the person making it from all liability for costs in the action. — Disclaimer not to affect action but to relieve maker of costs

Comment: Compare with s. 117 (3) of the Municipal Elections Act and s. 102 of the Election Act, 1984.

165. Proceedings for the removal from office of a person whose election is alleged to have been improper or illegal, or who is alleged not to have been properly elected, and proceedings to have the right of a person to sit on a council or as a member of a school board or local board, as the case may be, determined shall be had and taken only under the provisions of this Act.

Procedure substituted for quo warranto proceedings

Comment: Compare with s. 118 of the Municipal Elections Act.

PART XIII

ELECTION FINANCES: DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND EXPENSES

Interpretation

Interpretation

166. In this Part,

1. "campaign expense" means any expense incurred for goods or services in relation to an election by or on behalf of a candidate registered under this Part for use in whole or in part during the period preceding and including voting day in the election other than,

   (a) an expense incurred by a candidate in seeking nomination in accordance with this Act,

   (b) a candidate's deposit as required under this Act,

   (c) accounting fees,

   (d) interest on loans authorized under section 179,

   (e) an expense incurred for "victory parties" held and "thank you" advertising published after voting day,

   (f) an expense relating to a recount in respect of the election,

   (g) an expense relating to an action commenced under section 152, and

   (h) any child care expenses of a candidate,

but shall be deemed to include the value of any goods held in inventory or any fee or expense for any candidate, and contribution of goods and services to the candidate registered under this Part, for use in whole or in part during the period prescribed in this paragraph;

Comment: Compare with s. 1 (1) of the Election Finances Act, 1986.

2. "candidate" means a candidate as defined in section 1 and includes,

(a) a person who proposes to be nominated and who subsequently is nominated as a candidate and whose nomination is certified by the returning officer in accordance with this Act, and

(b) a person who proposes to be nominated as a candidate in accordance with this Act and for this purpose files a notice of registration with the returning officer under section 168 but who subsequently fails to file a nomination paper or whose nomination is rejected by the returning officer under this Act;

3. "contribution" includes a contribution made to a representative of a candidate but does not include,

(a) any goods produced for a candidate by voluntary unpaid labour,

(b) any service actually performed for a candidate by an individual voluntarily, provided that this individual does not receive from his or her employer or from any person, corporation or trade union under an arrangement with the individual's employer compensation in excess of what he or she would normally receive during the period this service was performed, and

(c) any moneys, goods or service solicited by or donated to a candidate for purposes other than those set out in subsection 168 (3);

Comment: Compare with ss. 121 (1)(b), (3) and (4) of the Municipal Elections Act and s. 1 (1) para. 9 of the Election Finances Act, 1986.

4. "year" means calendar year.

Comment: Compare with ss. 121 (2) of the Municipal Elections Act and s. 1 (1) para. 23 of the Election Finances Act, 1986.

Application

167. This Part applies to all elections governed by this Act. Application of Part

Comment: See Recommendation 46.

Registration

Registration of candidate

168.-(1) Every candidate seeking election to office under this Act shall file with the returning officer of the municipality who is responsible for the conduct of the election a notice of registration in the prescribed form.

(2) Any person who files a notice of registration under subsection (1) shall be deemed to be a candidate registered under this Part.

The same

(3) No person and no person, corporation or trade union acting on behalf of this person shall accept contributions for the candidacy of this person at an election or for an election campaign of this person at any time unless this person is a candidate registered under this Part.

Returning officer to maintain record

(4) The returning officer shall keep a record of every candidate who has filed a notice of registration under subsection (1).

Contributions

Contributions and how and when to be made

169.-(1) Contributions to candidates registered under this Part may be made only by persons, corporations and trade unions and may be made at any time during the year.

Comment: Compare with ss. 121 (1)(d) and 121 (2)(a) of the Municipal Elections Act and s. 17 (1) of the Election Finances Act, 1986.

How contributions of money to be made

(2) Money contributions to candidates registered under this Part in amounts in excess of $25 shall be made only by,

(a) a cheque having the name of the contributor legibly printed on it and drawn on an account in the contributor's name;

(b) a money order signed by the contributor; or

(c) in the case of money contributions by an individual, the use of a credit card having the name of the individual contributor imprinted or embossed on it.

Comment: Compare with s. 17 (2) of the Election Finances Act, 1986.

170.-(1) Contributions by any person, corporation or trade union to candidates registered under this Part are limited to moneys, goods and services and, in total amount or value, shall not exceed, during any year, $750 to any candidate in the jurisdiction of the municipality, school board or local board, as the case may be.

Limitation on contributions

Comment: See Recommendation 31. Compare with s. 121 (2)(a) of the Municipal Elections Act and s. 19 (1) of the Election Finances Act, 1986.

(2) Any moneys used for an election campaign by a candidate registered under this Part out of the candidate's own funds or those of the spouse of the candidate shall be considered to be a contribution for the purposes of this Part, except that the limit on the total amount of contributions established under subsection (1) does not apply, and every candidate shall submit to the returning officer at the same time as the report or, if applicable, the statutory declaration required by section 185, a statement in writing setting out all campaign expenses paid or to be paid out of the candidate's own funds or those of the spouse of the candidate, together with all receipts and claims for those expenses.

Candidate's funds, etc., considered contribution

Comment: See Recommendation 31. Compare with s. 19 (3) of the Election Finances Act, 1986.

171.-(1) Subject to section 177, no person, corporation or trade union shall contribute to any candidate registered under this Part funds not actually belonging to the person, corporation or trade union or any funds that have been given or furnished by any person or group of persons or by any corporation or trade union for the purpose of making a contribution to any registered candidate.

Contributor to contribute only funds belonging to contributor

Comment: Compare with s. 20 (1) of the Election Finances Act, 1986.

(2) Subsection (1) does not apply to the personal representative of the estate of a person who has died leaving a will where the deceased person has directed in the will that the personal representative make a contribution to a named registered candidate out of the funds of the estate.

Exception

(3) No candidate registered under this Part, and no person, corporation or trade union on behalf of the candidate, shall solicit or knowingly accept any contribution contrary to subsection (1).

Prohibition to accept contributions contrary to subs. (1)

Comment: Compare with s. 20 (2) of the Election Finances Act, 1986.

172. No candidate registered under this Part shall accept funds from, — No funds from political parties, etc.

(a) a federal political party registered under the Canada Elections Act or any federal constituency association or candidate at a federal election endorsed by such federal political party; or — 1973-74, c. 14 (Can.)

(b) a provincial political party, constituency association, candidate or leadership contestant registered under the Election Finances Act, 1986. — S.O. 1986, c. 33

173. Every candidate registered under this Part shall issue or cause to be issued receipts for every contribution accepted. — Receipts

Comment: Compare with s. 121 (2)(c) of the Municipal Elections Act and s. 26 of the Election Finances Act, 1986.

174.-(1) Any contribution to a candidate registered under this Part made through any unincorporated association or organization, except a trade union, shall be recorded by the unincorporated association or organization as to the individual sources and the amounts making up the contribution. — Group contributions

Comment: Compare with s. 27 (1) of the Election Finances Act, 1986.

(2) The amounts making up a contribution under subsection (1) that are attributable to any person, corporation or trade union are contributions of that person, corporation or trade union for the purposes of this Part. — Application of Part to amounts making up contribution

Comment: Compare with s. 27 (2) of the Election Finances Act, 1986.

175. No candidate registered under this Part and no person, corporation or trade union on behalf of the candidate shall knowingly accept any contributions in excess of the limits imposed by this Part. — Candidates, etc., not to receive contributions in excess of limitations

Comment: See Recommendation 31. Compare with s. 121 (2)(b) of the Municipal Elections Act and s. 29 of the Election Finances Act, 1986.

176. No candidate registered under this Part shall directly or indirectly knowingly accept contributions from, — No contributions from outside Ontario

(a) any person normally resident outside Ontario;

(b) any corporation that does not carry on business in Ontario; or

(c) a trade union other than a trade union as defined in this Act.

Comment: Compare with s. 30 (1)(a) of the Election Finances Act, 1986.

177. Contributions of not more than 15 cents per month by any member of a bargaining unit represented by a trade union through payroll deductions shall not be considered contributions from a person for the purpose of this Part, but any amounts contributed to a candidate registered under this Part shall be deemed to be a contribution from the trade union. — Trade unions check-off

Comment: Compare with s. 32 of the Election Finances Act, 1986.

178. Every candidate registered under this Part shall keep a record of all contributions, whether in the form of money, goods or services, received by him or her in respect of his or her candidacy. — Record of contributions to be kept

Comment: Compare with s. 121 (2)(e) of the Municipal Elections Act.

Borrowing

179.-(1) A candidate registered under this Part may borrow from any chartered bank or other recognized lending institution in Ontario, provided that all such loans and their terms, including the name of any guarantor of a loan, are recorded by the candidate and reported to the returning officer in accordance with clause 185 (1)(e). — Borrowing by candidate

Comment: Compare with s. 36 (1) of the Election Finances Act, 1986.

(2) No candidate registered under this Part shall receive any support in the form of a loan from any person, corporation, trade union, or unincorporated association or organization, other than from a chartered bank or other recognized lending institution as provided in subsection (1). — Limitation

Comment: Compare with s. 36 (2) of the Election Finances Act, 1986.

Loans

180.-(1) Subject to subsection (2), no person, corporation, trade union, unicorporated association or organization shall make, or sign, co-sign or provide collateral security for any loan, monetary obligation or indebtedness for or on behalf of any candidate registered under this Part. — Guarantee of loan to candidates prohibited

Comment: Compare with s. 37 (1) of the Election Finances Act, 1986.

(2) Any person who or corporation or trade union which is eligible to make a contribution under this Part may guarantee any loan referred to in subsection 179 (1). — Exception

Comment: Compare with s. 37 (2) of the Election Finances Act, 1986.

(3) Any guarantee or any payment made by a guarantor in respect of a loan referred to in subsection 179 (1) shall not be considered to be a contribution for the purposes of this Part, provided that, where the guarantor forgives or waives all or any part of the borrower's indebtedness that has been guaranteed, the amount so forgiven or waived shall be considered to be a contribution for the purposes of this Part and may be forgiven or waived only to the extent permitted under section 170. — When loan considered contribution

Comment: Compare with s. 37 (3) of the Election Finances Act, 1986.

Campaign Expenses

181.-(1) The campaign expenses of a candidate registered under this Part shall be incurred only under the direction of the candidate by persons authorized by the candidate. — Authority to incur campaign expenses

(2) Every person authorized to incur a campaign expense by the candidate under subsection (1) shall, upon request, show a certificate, in the prescribed form, signed by the candidate as proof of his or her authority. — Certificate of authority

182. Every candidate registered under this Part shall keep a record of all campaign expenses incurred by him or her in respect of his of her candidacy. — Record of campaign expenses to be kept

Comment: Compare with s. 121 (2)(d) of the Municipal Elections Act.

183.-(1) The total campaign expenses incurred by a candidate registered under this Part in an election for the office of head of council of a municipality and any person, corporation or trade union acting on behalf of that candidate during the period preceding and including voting day in the election shall not exceed the aggregate amount of $5,500, plus, — Limitation on campaign expenses of candidates for head of council

(a) in the case of a municipality having more than 1,000 but not more than 20,000 electors, $0.40 per elector;

(b) in the case of a municipality having more than 20,000 but not more than 100,000 electors, $0.50 per elector; or

(c) in the case of a municipality having more than 100,000 electors, $0.45 per elector.

Comment: See Recommendation 32.

(2) Subject to subsection (3), the total campaign expenses incurred by a candidate registered under this Part in an election for the office of, — Limitation of campaign expenses of candidate for other offices

(a) member of council, other than head of council, of a municipality;

(b) member of council of a regional municipality where this office is required to be filled by the vote of the electors of an area municipality; or

(c) member of a school board or of a local board whose members are to be elected at elections required by law to be conducted by the same officers and in the same manner as elections of members of the council of a municipality,

as the case may be, and any person or organization acting on behalf of that candidate during the period preceding and including voting day in the election shall not exceed the aggregate amount of $3,500, plus,

(d) in the case of a municipality or a school board or local board jurisdiction having more than 1,000 but not more than 20,000 electors, $0.40 per elector;

(e) in the case of a municipality or a school board or local board jurisdiction having more than 20,000 but not more than 100,000 electors, $0.50 per elector; or

(f) in the case of a municipality or a school board or local board jurisdiction having more than 100,000 electors, $0.45 per elector.

Comment: See Recommendation 32.

Limitation on campaign expenses of candidate for other offices where ward elections

(3) Where the municipality or the school board or local board jurisdiction is divided into wards and the election is for an office to represent the electors of one or more of those wards, the number of electors is to be used in the calculation of the maximum amount of total campaign expenses that may be incurred by or on behalf of a registered candidate for the office shall be the total number of electors in the ward or wards, as the case may be.

Comment: See Recommendation 33.

Determination of number of electors by returning officer

(4) For the purpose of this section, the number of electors in a municipality or a school board or local board jurisdiction or a ward of the municipality or the school board or local board jurisdiction shall be determined by the returning officer on the basis of information obtained from the voters' list prepared by the revising officer under section 46.

Calculation and certification of maximum campaign expenses by returning officer, etc.

(5) After determining the number of electors under subsection (4), the returning officer shall calculate, for each office, the maximum amount of total campaign expenses that may be incurred by or on behalf of a registered candidate for an office under subsection (1) or (2), whichever is applicable, and certify this amount in the prescribed form and, no later than nomination day, deliver or cause to be delivered personally or send or cause to be sent by registered mail a copy of the certificate to each registered candidate for the office and to the Commission.

(6) Certification of the maximum amount of total campaign expenses that may be incurred by or on behalf of a registered candidate for the office by the returning officer under subsection (5) shall be conclusive evidence of that fact and shall not be open to later challenge. — Certificate conclusive

184.-(1) Every person who or corporation or trade union which has any claim for payment in relation to a campaign expense shall submit his, her or its claim within three months after voting day to the candidate registered under this Part who incurred the expense. — Time for submission of claims for payment

Comment: See Recommendation 47. Compare with s. 34 (6) of the Election Finances Act, 1986.

(2) Every payment of a campaign expense shall be made by the registered candidate who incurred the campaign expense and, except where the campaign expense is less than $25, it shall be vouched for by a statement setting out the particulars and proof of payment. — Payment of expenses by candidate

Comment: Compare with and s. 39 (7) of the Election Finances Act, 1986.

(3) Where the registered candidate disputes or refuses to pay any claim for payment in relation to a campaign expense, that claim shall be considered to be a disputed claim and the claimant may bring an action for payment in any court of competent jurisdiction. — Disputed claims

Comment: Compare with s. 39 (8) of the Election Finances Act, 1986.

Reports and Statutory Declarations

185.-(1) Every candidate registered under this Part shall file with the returning officer of the municipality who is responsible for the conduct of the election within six months after voting day in the election a report in the prescribed form which shall contain, — Report on contributions and expenses to be filed with returning officer

(a) a statement of total amount of money contributions received by the candidate in respect of his or her candidacy up to the date of the report;

(b) a list of contributions in the form of goods or services and the value of them received by the candidate in respect of his or her candidacy up to the date of the report;

(c) the name, address and contribution of each person who or corporation or trade union which, up to the date of the report, made a contribution, whether in the form of money, goods or services, if more than $25;

(d) an itemized list of all expenses incurred by the candidate in respect of his or her candidacy up to the date of the report; and

(e) all the information required to be recorded by the candidate under subsection 179 (1) that relates to the election.

Comment: See Recommendation 46. Compare with s. 121 (1)(f) of the Municipal Elections Act.

Statutory declaration where contributions and expenses under $1,000

(2) Notwithstanding subsection (1), where the contributions received and the campaign expenses incurred by a candidate registered under this Part in respect of his or her candidacy do not exceed $1,000, the candidate may, instead of filing the report required under subsection (1), file a statutory declaration in the prescribed form to that effect.

Comment: See Recommendation 46.

186.-(1) After the time prescribed for the filing of a report or, if applicable, a statutory declaration under section 185 has expired, the returning officer shall, within the next thirty days, prepare a statement in the prescribed form disclosing,

(a) the information received by him or her under that section; and

(b) the name of the candidate, if any, who failed to file a report or declaration under that section,

and submit the statement to the council of the municipality, school board or local board, as the case may be.

Comment: Compare with s. 121 (2)(g) of the Municipal Elections Act.

(2) The returning officer shall, at the same time, send a copy of the statement submitted to the council or board under subsection (1) to the Commission. — Copy to be sent to Commission

187.-(1) Where a candidate registered under this Part who is not declared elected fails to file a report or statutory declaration as required by section 185, the candidate, in addition to any other penalty, is ineligible to be nominated in any subsequent election relating to any office for a period of six years from the date of the election, unless prior to that subsequent election the candidate has filed the required report or declaration with the returning officer. — Failure of candidate not elected to file report

Comment: See Recommendation 49. Compare with s. 44 (1) of the Election Finances Act, 1986.

(2) Where a candidate registered under this Part is declared elected, — Vacation of office

(a) if the total campaign expenses incurred by the candidate in relation to the election at which the candidate was elected exceeds the amount determined under section 183; or

(b) if the candidate fails to file a report or, if applicable, statutory declaration as required by section 185,

the returning officer shall notify in writing the candidate and the council or school board or local board, as the case may be, to which the candidate was elected and, if the council or board finds no mitigating reason for non-compliance, the office to which the candidate was elected shall be immediately declared vacant and, in addition, the candidate is liable to any other penalty that may be imposed under any Act.

Comment: See Recommendation 49. Compare with s. 44 (2) of the Election Finances Act, 1986.

(3) Where the office to which a candidate registered under this Part was elected is subsequently declared vacant as a result of the reason given in clause (2)(b), the candidate, in addition to any other penalty, is ineligible to be nominated as a candidate in any subsequent election relating to any office for a period of six years from the date of the election, unless prior to that subsequent election the candidate has filed the required report or declaration with the returning officer. — Failure of candidate elected to file report

Comment: See Recommendation 49. Compare with ss. 44 (1) and (2) of the Election Finances Act, 1986.

Access to Documents

Inspection of reports on file with returning officer

188.-(1) All reports filed with the returning officer under this Part are public records and may be inspected by any person upon request at the office of the returning officer during normal office hours.

Comment: Compare with s. 16 (1) of the Election Finances Act, 1986.

Extracts and copies

(2) Any person may make extracts from the reports or declarations referred to in subsection (1) and is entitled to copies of the reports or declarations upon payment for the preparation of the copies at such rate as the returning officer charges for the preparation of copies of other documents in his or her office.

Comment: Compare with s. 16 (2) of the Election Finances Act, 1986.

Not to be used for commercial solicitation

(3) No person, corporation or trade union shall use any of the information contained in any report filed with the returning officer under this Part for the purposes of commercial solicitation.

Comment: Compare with s. 16 (3) of the Election Finances Act, 1986.

Application of section to other documents

(4) This section also applies to,

(a) any notice of registration filed under subsection 168 (1);

(b) a record kept by the returning officer under subsection 168 (4); and

(c) any statement prepared by the returning officer that is required to be submitted to the council, school board or local board, as the case may be, under section 186.

Offences

189. Every person who contravenes any of the provisions of this Part is guilty of an offence and is liable to a fine of not more than $5,000. — Offence by person

Comment: Compare with s. 121 (5) of the Municipal Elections Act.

190. Every corporation or trade union that contravenes any of the provisions of this Part is guilty of an offence and on conviction is liable to a fine of not more than $50,000. — Offence by corporation or union

Comment: Compare with s. 49 of the Election Finances Act, 1986.

191.-(1) Any act or thing done or omitted by an officer, official or agent of a trade union within the scope of his or her authority to act on behalf of the trade union shall be deemed to be an act or thing done or omitted by the trade union. — Vicarious responsibility

Comment: Compare with s. 54 (2) of the Election Finances Act, 1986.

(2) A prosecution for an offence under this Part may be instituted against a trade union in the name of the trade union and, for the purposes of any such prosecution, a trade union shall be deemed a person. — Style of prosecution of union

192.-(1) No prosecution shall be instituted under this Part without the consent of the Commission and no prosecution shall be instituted more than one year after the facts upon which the prosecution is based first came to the knowledge of the Commission. — Consent of Commission and limitation

Comment: Compare with s. 55 of the Election Finances Act, 1986.

(2) Notwithstanding subsection (1), the Attorney General may institute a prosecution under this section at any time. — Exception

PART XIV

ELECTION FINANCES: DISCLOSURE AND TAX CREDITS

Interpretation

193. In this Part, — Interpretation

1. "broadcasting undertaking" means a broadcasting undertaking as defined in section 2 of the Broadcasting Act (Canada); — R.S.C. 1970, c. B-11

   Comment: Compare with s. 1 (1), para. 2 of the Election Finances Act, 1986.

2. "campaign expense" means any expense incurred for goods or services in relation to an election by or on behalf of a candidate registered under this Part for use in whole or in part during the period commencing on,

   (a) in the case of a general election, the first day of January in an election year, or

   (b) in the case of a by-election, the day on which,

      (i) a directive to hold a by-election is given in any judicial proceedings,

      (ii) the council of the municipality passes a by-law to hold a by-election, or

      (iii) the returning officer receives from the secretary of a school board notice that a by-election is required,

      as the case may be,

   and ending on voting day, other than,

   (c) an expense incurred by a candidate in seeking nomination in accordance with this Act,

   (d) a candidate's deposit as required under this Act,

   (e) auditor's and accounting fees,

   (f) interest on loans authorized under section 217,

(g) an expense incurred in holding a fund-raising function referred to in section 208,

(h) an expense incurred for "voting parties" held and "thank you" advertising published after voting day,

(i) fees paid in respect of maintaining a credit card facility,

(j) an expense relating to a recount in respect of the election,

(k) an expense relating to an action commenced under section 152, and

(l) any child care expense of a candidate and other expenses not of partisan value that are set out in guidelines provided by the Commission under this Part,

but shall be deemed to include the value of any goods held in inventory or any fees or expenses for services for any candidate, and any contribution of goods and services to the candidate registered under this Part, for use in whole or in part during the period prescribed in this paragraph;

Comment: Compare with s. 1 (1), para. 4 of the Election Finances Act, 1986.

3. "campaign period" means the period,

(a) commencing on,

(i) in the case of a general election, the first day of January of an election year, or

(ii) in the case of a by-election, the day on which,

A. a directive to hold a by-election is given in any judicial proceedings,

B. the council of the municipality passes a by-law to hold a by-election, or

C. the returning officer receives from the secretary of a school board notice that a by-election is required,

as the case may be, and

(b) ending, unless the Commission grants an extension, six months after voting day;

Comment: See Recommendations 39 and 40. Compare with s. 1 (1), para. 5 of the Election Finances Act, 1986.

4. "candidate" means a candidate as defined in section 1 and includes,

(a) a person who proposes to be nominated and who subsequently is nominated as a candidate and whose nomination is certified by the returning officer in accordance with this Act, and

(b) a person who proposes to be nominated as a candidate in accordance with this Act and for this purpose files an application for registration with the Commission under section 198 but who subsequently fails to file a nomination paper or whose nomination is rejected by the returning officer in accordance with this Act;

5. "Commission", unless the context suggests otherwise, means the Commission on Election Finances established by the Election Finances Act, 1986; S.O. 1986, c. 33

Comment: See Recommendation 37.

6. "contribution" includes a contribution made to a representative of a candidate but does not include,

(a) any goods produced for a candidate by voluntary unpaid labour,

(b) any service actually performed for a candidate by an individual voluntarily, provided that this individual does not receive from his or her employer or from any person, corporation or trade union under an arrangement with the individual's employer compensation in excess of what he or she would receive during the period this service was performed, and

(c) any moneys, goods or services solicited by or donated to a candidate for purposes other than those set out in subsection 198 (3);

Comment: Compare with s. 121 (1)(b), (3) and (4) of the Municipal Elections Act and s. 1 (1), para. 9 of the Election Finances Act, 1986.

7. "news reporting done in good faith" includes interviews, commentaries or other works prepared for and published by any newspaper, magazine or other periodical publication or broadcast on the facilities of any broadcasting undertaking without charge to any candidate registered under this Part;

Comment: Compare with s. 1 (1), para. 1 of the Election Finances Act, 1986.

8. "outdoor advertising facilities" means facilities, other than radio and television and newspapers, magazines and other periodical publications, of any person or corporation that is in the business of providing these facilities on a commercial basis for advertising purposes.

Comment: Compare with 1 (1), para. 15 of the Election Finances Act, 1986.

Application

Council to pass by-law

194.-(1) Notwithstanding section 167, the council of a municipality may pass a by-law to have this Part apply to elections for the office of member of council of the municipality.

Comment: See Recommendation 35.

Where by-law passed by regional municipality

(2) Where the council of a regional municipality passes a by-law under subsection (1), the clerk of the regional municipality shall send a copy of the by-law to the Commission, to the Ontario Local Government Elections Commission, and, if applicable, to the returning officer of any area municipality who is responsible for the conduct of any election to the council of the regional municipality.

(3) Where the council of a municipality, other than a regional municipality, passes a by-law under subsection (1), the clerk of the municipality shall send a copy of the by-law to the Commission and to the Ontario Local Government Elections Commission.

Where by-law passed by other municipalities

Comment: See Recommendation 35.

195.-(1) Notwithstanding section 167, where members of a school board are to be elected at elections required by law to be conducted by the same officers and in the same manner as elections of members of the council of a municipality, the school board may pass a resolution to have this Part apply to elections of members of the board and, where a resolution is passed under this section, this Part shall apply to elections of members of the board.

School board to pass resolution

Comment: See Recommendation 35.

(2) Where a school board passes a resolution under subsection (1), the secretary of the board shall send a copy of the resolution to the Commission, to the Ontario Local Government Elections Commission and to the returning officer of the municipality who is responsible for the conduct of the elections of the board.

Copy of resolution to be sent to C.O.E.F., O.L.G.E.C. and returning officer

Comment: See Recommendation 35.

196.-(1) Notwithstanding section 167, where members of a public utilities' commission are to be elected at elections required by law to be conducted by the same officers and in the same manner as elections of members of the council of a municipality, the public utilities' commission may pass a resolution to have this Part apply to elections of members of the commission and, where a resolution is passed under this section, this Part shall apply to elections of the commission.

P.u.c. to pass resolution

Comment: See Recommendation 35.

(2) Where a public utilities' commission passes a resolution under subsection (1), the secretary of the public utilities' commission shall send a copy of the resolution to the Commission, to the Ontario Local Government Elections Commission and to the returning officer of the municipality who is responsible for the conduct of the elections of the commission.

Copy of resolution to C.O.E.F., O.L.G.E.C. and returning officer

Comment: See Recommendation 35.

When to be passed

197.-(1) A by-law under section 194 or a resolution under section 195 or 196 shall be passed prior to the first day of January of an election year and, once passed, shall remain in force until repealed by a by-law of the council of the municipality or by a resolution of the school board or the public utilities' commission, as the case may be, but no such repealing by-law or resolution shall be passed or take effect in an election year.

Comment: See Recommendation 36.

Effect on Part XIII

(2) A by-law passed under section 194 or a resolution passed under section 195 or 196 does not affect the operation of Part XIII at any time other than during a campaign period as defined in this Part.

Operation of Part XIV after by-law, etc., repealed

(3) The repeal of a by-law passed under section 194 or of a resolution passed under section 195 or 196 does not affect any rights, duties, responsibilities, obligations, liabilities or other matters arising out of the application of this Part to an election conducted while the by-law or resolution was in force.

Registration

Registration of candidate

198.-(1) Where the council of a municipality passes a by-law under section 194 or a school board passes a resolution under section 195 or a public utilities' commission passes a resolution under section 196, every candidate seeking election to office on the council or school board or public utilities' commission, as the case may be, shall, no earlier than the first day of January of the election year and no later than nomination day, file with the Commission on Election Finances an application for registration under this Part.

Comment: See Recommendation 41. Compare with s. 14 (1) of the Election Finances Act, 1986.

Registration in by-elections

(2) In the case of a by-election, the application for registration referred to in subsection (1) shall be filed with the Commission no earlier than the day on which,

(a) a directive to hold a by-election is given in any judicial proceedings;

(b) the council of the municipality passes a by-law to hold a by-election; or

(c) the returning officer receives from the secretary of a school board notice that a by-election is required,

as the case may be, and no later than nomination day.

The same

(3) No person and no person or corporation or trade union acting on behalf of this person shall accept contributions for the candidacy of this person at an election or for an election campaign of this person during the campaign period of the election unless this person is a candidate registered under this Part.

Comment: Compare with s. 14 (2) of the Election Finances Act, 1986.

Application for registration

(4) The Commission shall maintain a register of candidates in relation to each election and, subject to this section, shall register in it any candidate who files an application for registration with the Commission setting out,

(a) that the candidate,

(i) has been duly nominated under this Act by filing nomination papers with the returning officer for the election, or

(ii) has not been so nominated under this Act, but proposes to become so,

together with,

(iii) the name of the office for which the candidate has been, or will be, nominated, and

(iv) the name of the municipality in which the election is to be held or which is responsible for the conduct of the election, as the case may be;

(b) the full name and address of the candidate;

(c) the address of the place or places in the municipality or locality where records of the candidate are maintained and of the place in the municipality or locality to which communications may be addressed;

(d) the full names and addresses of the auditor and the chief financial officer of the candidate;

(e) the full names and addresses of all persons authorized by the candidate to accept contributions;

(f) the name and address of every chartered bank, trust company or other financial institution in Ontario that is lawfully entitled to accept deposits to be used by or on behalf of the candidate as the depositories for all contributions made to that candidate; and

(g) the full names and addresses of the persons responsible for each depository referred to in clause (f).

Comment: Compare with s. 14 (3) of the Election Finances Act, 1986.

Effective date of registration

(5) A candidate, including a person who proposes to become a candidate, who files an application under subsection (4) shall be deemed to be registered on the day of filing.

Comment: Compare with s. 14 (4) of the Election Finances Act, 1986.

Mailing of application deemed filing

(6) An application under subsection (4) may be filed with the Commission by registered mail in which case it shall be deemed to be filed on the day it is mailed.

Comment: Compare with s. 14 (5) of the Election Finances Act, 1986.

Where candidate withdraws, etc.

(7) Where a registered candidate,

(a) withdraws his or her nomination,

(b) fails to file a nomination paper with the returning officer,

(c) has his or her nomination rejected by the returning officer, or

(d) is elected by acclamation,

under this Act; or

(e) dies prior to voting day,

the campaign period with respect to that candidate is deemed to expire,

(f) in the case of clause (a), on the day of the withdrawal of the nomination;

(g) in the cases of clauses (b) and (c), on nomination day, as may be extended by subsection 59 (5);

(h) in the case of clause (d), on the day of acclamation; and

(i) in the case of clause (e), on the day of his or her death,

and the chief financial officer for that candidate shall file with the Commission the statement referred to in section 224 and file a copy of it with the returning officer, within six months after the expiration of the campaign period with respect to that candidate, unless the Commission has granted an extension.

Comment: Compare with s. 14 (6) of the Election Finances Act, 1986.

Variation of register

(8) Where any of the information referred to in clauses (4)(b) to (g) is altered, the candidate shall immediately notify the Commission in writing of any such alteration, and, upon receipt of any such notice, the Commission shall vary the register of candidates accordingly.

Comment: Compare with s. 14 (7) of the Election Finances Act, 1986.

Notice of registration to returning officer

199.-(1) After registering a candidate under subsection 198 (4), the Commission shall notify in writing the returning officer of the municipality who is responsible for the conduct of the election and indicate to the returning officer,

(a) the full name and address of the candidate; and

(b) the name of the office for which the candidate has been, or will be nominated.

(2) The returning officer shall maintain a list of all candidates registered under this Part and the office for which the candidate has been, or will be, nominated. — List of registered candidates to be kept by returning officer

(3) Where the full name and address of a registered candidate is varied by the Commission under subsection 198 (8), the Commission shall immediately notify the returning officer in writing of any such variation, and, upon receipt of any such notice, the returning officer shall vary the list of candidates maintained under subsection (2) accordingly. — Variation of name and address

Chief Financial Officers

200.-(1) Every candidate who is applying for registration under this Part, before filing his or her application with the Commission, shall appoint a chief financial officer. — Chief financial officer of candidate

Comment: Compare with s. 34 (2) of the Election Finances Act, 1986.

(2) Where the chief financial officer ceases for any reason to hold office as such, the candidate shall immediately appoint another chief financial officer and shall immediately give notice in writing to the Commission of the full name and address of the new chief financial officer. — Appointment of new chief financial officer

Comment: Compare with s. 34 (3) of the Election Finances Act, 1986.

(3) The chief financial officer of a candidate registered under this Part in relation to the affairs of the candidate who appointed him or her shall be responsible for ensuring that, — Duties of chief financial officer

(a) proper records are kept of all receipts and expenses;

(b) contributions are placed in the appropriate depository;

(c) proper receipts are completed and dealt with in accordance with this Part;

(d) the financial statements as required by sections 224 and 228, together with the auditor's report on those statements are filed with the Commission in accordance with this Part;

(e) contributions consisting of goods or services are valued and recorded in accordance with this Part; and

(f) proper direction is given to persons whom he or she has authorized to incur expenses.

Comment: Compare with s. 34 (4) of the Election Finances Act, 1986.

Contributions

Contributors and how and when contributions to be made

201.-(1) Contributions to candidates registered under this Part may be made only by persons, corporations and trade unions during the campaign period.

Comment: See Recommendation 39. Compare with s. 17 (1) of the Election Finances Act, 1986.

Extension of campaign period

(2) Where a candidate registered under this Part shows cause, the Commission may extend the campaign period referred to in subsection (1) for such period as the Commission considers appropriate.

Comment: See Recommendation 40.

How contributions of money to be made

(3) Money contributions to candidates registered under this Part in amounts in excess of $25 shall be made only by,

(a) a cheque having the name of the contributor legibly printed or typed on it and drawn on an account in the contributor's name;

(b) a money order signed by the contributor; or

(c) in the case of money contributions by an individual, the use of a credit card having the name of the individual contributor imprinted or embossed on it.

Comment: Compare with s. 17 (2) of the Election Finances Act, 1986.

(4) All moneys accepted by or on behalf of a candidate shall be paid into the appropriate depository on record with the Commission. — Depositing of contributions

Comment: Compare with s. 17 (3) of the Election Finances Act, 1986.

202.-(1) Where the chief financial officer learns that any contribution received by or on behalf of the candidate for whom he or she acts was made or received in contravention of any provision of this Part, the chief financial officer shall, within thirty days after learning that the contribution was made contrary to this Part and upon obtaining the contributor's copy of the receipt issued under section 210 in respect of that contribution, return the contribution or an amount equal to the sum contributed. — Return of contributions made in contravention of Part

Comment: Compare with s. 18 (1) of the Election Finances Act, 1986.

(2) Any contributions not returned to the contributor in accordance with subsection (1) or any anonymous contribution received by a candidate registered under this Part shall not be used or spent, but shall be paid over to the Commission and become part of the general funds of the Commission to be used by the Commission in carrying out its responsibilities under this or any other Act. — Anonymous, etc., contributions

Comment: Compare with s. 18 (2) of the Election Finances Act, 1986.

203.-(1) Contributions by any person, corporation or trade union to candidates registered under this Part are limited to moneys, goods and services and, in total amount or value, shall not exceed, during any campaign period, $750 to any registered candidate in the jurisdiction of the municipality, school board or public utilities' commission, as the case may be. — Limitation on contributions

Comment: See Recommendation 31. Compare with s. 19 (1) of the Election Finances Act, 1986.

(2) Any moneys used for an election campaign by a registered candidate out of the candidate's own funds or those of the spouse of the candidate shall be considered to be a contribution for the purposes of this Part, except that the limit on the total amount or value of contributions established under subsection (1) does not apply, and every registered candidate shall submit to his or her chief financial officer a statement in writing setting out all — Candidate's funds, etc., considered contribution

campaign expenses paid or to be paid out of the candidate's own funds or those of the spouse of the candidate, together with all receipts and claims for those expenses, within six months after voting day.

Comment: See Recommendation 31. Compare with s. 19 (3) of the Election Finances Act, 1986.

Contributor to contribute only funds belonging to contributor

204.-(1) Subject to subsection (2) and section 214, no person, corporation or trade union shall contribute to any candidate registered under this Part funds not actually belonging to the person, corporation or trade union or any funds that have been given or furnished by any person or group of persons or by any corporation or trade union for the purpose of making a contribution to any registered candidate.

Comment: Compare with s. 20 (1) of the Election Finances Act, 1986.

Exception

(2) Subsection (1) does not apply to the personal representative of the estate of a person who has died leaving a will where the deceased person has directed in the will that the personal representative make a contribution to a named registered candidate out of the funds of the estate.

Prohibition to accept contributions contrary to subs. (1)

(3) No candidate registered under this Part, and no person, corporation or trade union on behalf of this candidate, shall solicit or knowingly accept any contribution contrary to subsection (1).

Comment: Compare with s. 20 (2) of the Election Finances Act, 1986.

Funds from political parties

205. No candidate registered under this Part shall accept funds from,

(a) a federal political party registered under the Canada Elections Act or any federal constituency association or candidate at a federal election endorsed by such federal political party; 1973-1974, c. 14 (Can.)

(b) a provincial political party, constituency association, candidate or leadership contestant registered under the Election Finances Act, 1986. S.O. 1986, c.33

Comment: Compare with ss. 21 and 30 (1)(b) of the Election Finances Act, 1986.

Value of goods and services

206.-(1) The value of goods and services, other than those that are not contributions by reason of the definition of "contribution" in section 193, provided to a candidate registered under this Part shall be,

(a) where the contributor is in the business of supplying these goods and services, the lowest amount charged by the contributor for an equivalent amount of similar goods and services at or about the time and in the market area in which the goods or services are provided; and

(b) where the contributor is not in the business of supplying these goods or services, the lowest amount charged, at or about the time the goods or services are provided, by any other person, corporation or trade union providing similar goods on a commercial retail basis or similar services on a commercial basis in the market area in which the goods or services are provided.

Comment: Compare with s. 22 (1) of the Election Finances Act, 1986.

Amounts of $100 or less may be considered not to be a contribution

(2) The provision of goods or services to a candidate registered under this Part, in any campaign period, having a value, in the aggregate, of $100 or less may, at the option of the person, corporation or trade union providing these goods or services, be considered not to be a contribution for the purposes of this Part.

Comment: Compare with s. 22 (2) of the Election Finances Act, 1986.

Where goods or services provided for price less than value determined under subs. (1)

(3) Where goods or services are provided to a candidate registered under this Part for a price that is less than the value of the goods or services as determined under subsection (1), the amount that the price is less than that value shall, subject to subsection (2), be a contribution for the purpose of this Part.

Comment: Compare with s. 22 (3) of the Election Finances Act, 1986.

Advertising as contribution

207.-(1) Where any person, corporation or trade union with the knowledge and consent of a candidate registered under this Part promotes the election of the candidate or opposes the election of any other registered candidate by advertising on the facilities of any broadcasting undertaking or by

publishing an advertisement in any newspaper, magazine or other periodical publication or printed leaflets, pamphlets or other documents or through the use of any outdoor advertising facility and the amount of the cost of such political advertisement,

(a) in the case of any single advertisement, is more than $100, and

(b) in the case of any advertisements from a single service broadcast or published in any campaign period, in the aggregate, exceeds $100,

this amount shall be considered to be a contribution and, if done during the campaign period, a campaign expense for the purposes of this Part to the candidate with whose knowledge and consent the political advertising was done.

Comment: Compare with s. 23 (1) of the Election Finances Act, 1986.

Where not considered to be a contribution

(2) Notwithstanding subsection (1), where political advertising is provided on the facilities of any broadcasting undertaking without charge to registered candidates in a particular municipality or school board or public utilities' commission jurisdiction, as the case may be, in accordance with the provisions of the Broadcasting Act (Canada), the regulations made under it and Guides published in accordance with it, such political broadcasts shall not be considered a contribution or a campaign expense for the purpose of this Part to these candidates.

R.S.C. 1970, c. B-11

Comment: Compare with s. 23 (2) of the Election Finances Act, 1986.

(3) No person, corporation or trade union shall cause any political advertisement to be broadcast on the facilities of any broadcasting undertaking or published in any newspaper, magazine or other periodical publication or through the use of any outdoor advertising facility unless he, she or it furnishes to the broadcaster or publisher of the political advertisement his, her or its identification in writing, together with the identification, in writing, of any person, corporation or trade union sponsoring the political advertisement.

Comment: Compare with s. 23 (3) of the Election Finances Act, 1986.

(4) Any broadcaster who broadcasts or any publisher who publishes a political advertisement shall maintain records for a period of two years after the date of the broadcast or publication setting out the advertisement, the charge for it and any material relating to identification furnished to the broadcaster or publisher in connection with the advertisement and shall permit the public to inspect these records during normal office hours. — Records

Comment: Compare with s. 23 (4) of the Election Finances Act, 1986.

(5) All political printed advertising, handbills, placards, posters and broadcast or telecast advertisements shall bear or make reference to the name of the person, corporation or trade union authorizing the political advertising. — Reference to person, etc., authorizing advertising

Comment: Compare with s. 23 (5) of the Election Finances Act, 1986.

(6) For the purposes of this section, "political advertisement" and "political advertising" means any matter promoting or opposing the election of any registered candidate for which a fee is paid, but it does not include any news reporting done in good faith. — Definition

Comment: Compare with s. 23 (6) of the Election Finances Act, 1986.

208.-(1) In this section, "fund-raising function" includes events or activities held for the purpose of raising funds for the candidate registered under this Part by whom or on whose behalf the function is held. — Fund-raising events

Comment: Compare with s. 24 (1) of the Election Finances Act, 1986.

(2) A fund-raising function held by or on behalf of a candidate registered under this Part shall be held only during the campaign period. — When fund-raising functions to be held

(3) The gross income from any fund-raising function shall be recorded and reported to the Commission by the chief financial officer of the candidate registered under this Part who held the function or on whose behalf the function was held. — Income to be reported

Comment: Compare with s. 24 (2) of the Election Finances Act, 1986.

(4) Where a charge by the sale of tickets or otherwise is made for a fund-raising function, all or any portion of this charge, up to a maximum of $25, may, at the option of the candidate by whom or on whose behalf the function was held, be considered not to be a contribution for the purposes of this Part. — Where charge may be considered not a contribution

Comment: Compare with s. 24 (3) of the Election Finances Act, 1986.

(5) Any amount paid for goods or services offered for sale at a fund-raising function in excess of the highest amount charged, at or about the time the goods or services are provided, by any other person providing similar goods on a commercial basis in the market area in which the goods or services are provided, shall be considered a contribution for the purposes of this Part. — Where amounts to be considered contributions

Comment: Compare with s. 24 (4) of the Election Finances Act, 1986.

209. Where at a meeting held on behalf of or in relation to the affairs of a candidate registered under this Part money is given in response to a general collection of money solicited from the persons in attendance at the meeting, no amount shall be given anonymously by any person in excess of $10 and the amounts so given shall be considered not to be contributions for the purposes of this Part, but the gross amount collected shall be recorded and reported to the Commission by the chief financial officer of the candidate. — Collection of money at meetings

Comment: Compare with s. 25 of the Election Finances Act, 1986.

210.-(1) Every candidate registered under this Part shall issue or cause to be issued receipts as prescribed by the Commission for every contribution accepted. — Receipts

Comment: Compare with s. 26 of the Election Finances Act, 1986.

(2) A receipt prescribed by the Commission under subsection (1) shall provide, on its face, for the acknowledgement of the contribution accepted by or on behalf of the registered candidate and, on its back, for an application to the returning officer of the municipality who was responsible for conducting the election for a tax credit — Form of receipt

that the contributor is eligible to receive under this Part on account of his, her or its contribution.

Group contributions

211.-(1) Any contribution to a candidate registered under this Part made through any unincorporated association or organization, except a trade union, shall be recorded by the unincorporated association or organization as to the individual sources and the amounts making up the contribution.

Comment: Compare with s. 27 (1) of the Election Finances Act, 1986.

Application of Part to amounts making up contribution

(2) The amounts making up a contribution under subsection (1) that are attributable to any person, corporation or trade union are contributions of that person, corporation or trade union for the purposes of this Part.

Comment: Compare with s. 27 (2) of the Election Finances Act, 1986.

Candidate, etc., not to receive contributions in excess of limitations

212. No candidate registered under this Part and no person, corporation or trade union on behalf of the candidate shall knowingly accept any contributions in excess of the limits imposed by this Part.

Comment: Compare with s. 29 of the Election Finances Act, 1986.

Contributions prohibited from outside Ontario

213. No candidate registered under this Part shall directly or indirectly knowingly accept contributions from,

(a) any person normally resident outside Ontario;

(b) any corporation that does not carry on business in Ontario; or

(c) a trade union other than a trade union as defined in this Act.

Comment: Compare with s. 30 (1)(a) of the Election Finances Act, 1986.

Trade unions check-off

214. Contributions of not more than 15 cents per month by any member of a bargaining unit represented by a trade union through payroll deductions shall not be considered contributions from a person for the purpose of this Part, but any amounts contributed to a candidate registered under this

Part from these funds shall be deemed to be a contribution from the trade union.

Comment: Compare with s. 32 of the Election Finances Act, 1986.

Who may accept contributions for candidates

215. No contribution shall be accepted by a registered candidate otherwise than through his or her chief financial officer or other person on record with the Commission as authorized to accept contributions.

Comment: Compare with s. 33 of the Election Finances Act, 1986.

Recording of contributions

216. Where any person acting on behalf of a candidate registered under this Part accepts in any campaign period a single contribution in excess of $25 or contributions from a single source that in the aggregate exceeds $25, the chief financial officer of the candidate shall record all such contributions and the full name and address of the contributor.

Comment: Compare with s. 35 (1) of the Election Finances Act, 1986.

Borrowing

Borrowing by candidate

217.-(1) A candidate registered under this Part may borrow from any chartered bank or other recognized lending institution in Ontario, provided that all such loans and their terms, including the name of any guarantor of a loan, are recorded by the candidate and reported to the Commission.

Comment: Compare with s. 36 (1) of the Election Finances Act, 1986.

Limitation

(2) No candidate registered under this Part shall receive any support in the form of a loan from any person, corporation, trade union, or unincorporated association, or organization, other than from a chartered bank or other recognized lending institution as provided in subsection (1).

Comment: Compare with s. 36 (2) of the Election Finances Act, 1986.

Loans

Guarantee of loan to candidates prohibited

218.-(1) Subject to subsection (2), no person, corporation, trade union, unincorporated association or organization shall make, or sign, co-sign or provide collateral security for any loan, monetary obligation or indebtedness for or on behalf of any candidate registered under this Part.

Comment: Compare with s. 37 (1) of the Election Finances Act, 1986.

Exception

(2) Any person who or corporation or trade union which is eligible to make a contribution under this Part may guarantee any loan referred to in subsection 217 (1).

Comment: Compare with s. 37 (2) of the Election Finances Act, 1986.

When loan considered contribution

(3) Any guarantee or any payment made by a guarantor in respect of a loan referred to in subsection 217 (1) shall not be considered to be a contribution for the purposes of this Part, provided that where the guarantor forgives or waives all or any part of the borrower's indebtedness that has been guaranteed, the amount so forgiven or waived shall be considered to be a contribution for the purposes of this Part and may be forgiven or waived only to the extent permitted under section 203.

Comment: Compare with s. 37 (3) of the Election Finances Act, 1986.

Campaign Advertising

Period of campaign advertising limited

219.-(1) No candidate registered under this Part and no person, corporation or trade union acting with his or her knowledge and consent shall, except during the period of twenty-eight days immediately preceding the day before voting day,

(a) advertise on the facilities of any broadcasting undertaking; or

(b) procure for publication, cause to be published or consent to the publication of, except during this period, an advertisement in a newspaper, magazine or other periodical publication or through the use of outdoor advertising facilities,

for the purpose of promoting or opposing the election of a registered candidate.

Comment: Compare with s. 38 (1) of the Election Finances Act, 1986.

The same

(2) No person or corporation shall, during the period prescribed in subsection (1), broadcast on the facilities of any broadcasting undertaking or publish in a newspaper, magazine or other periodical publication or through the use of outdoor advertising facilities an advertisement promoting or opposing the election of a registered candidate on behalf of any candidate registered under this Part or any person, corporation or trade union acting with his or her knowledge or consent.

(3) Subsections (1) and (2) do not apply to,

(a) advertising of public meetings in the municipality or the jurisdiction of the school board or public utilities' commission, as the case may be;

(b) announcing a candidate's campaign headquarters' location;

(c) advertising for volunteer campaign workers;

(d) announcing services for electors by candidates respecting revision of the preliminary list and additions to the voters' list under sections 47 and 79;

(e) announcing services for electors on voting day; or

(f) any other matter respecting administrative functions of a candidate's campaign headquarters,

provided that advertisements, announcements and other matters are done in accordance with the guidelines of the Commission.

Comment: Compare with s. 38 (2) of the Election Finances Act, 1986.

(4) Nothing contained in subsection (1) prohibits the procuring for publication, causing to be published or consenting to the publication of, — Extension of period of campaign advertising

(a) an advertisement referred to in subsection (1) on the day immediately preceding voting day in a newspaper which is published in the municipality or in the jurisdiction of the school board or public utilities' commission, as the case may be, not more frequently than once a week and whose day of regular publication falls on the day immediately preceding voting day;

(b) an advertisement referred to in subsection (1) on the day immediately preceding voting day and on voting day through the use of any commercial billboard advertising facility; or

(c) news reporting done in good faith during the period referred to subsection (1),

or prohibits the broadcasting on the facilities of a broadcasting undertaking of news reporting done in good faith in accordance with the provisions of the Broadcasting Act (Canada), the regulations under that Act and Guides published in accordance with it during the period referred to in subsection (1). — R.S.C. 1970, c. B-11

Comment: Compare with s. 38 (3) of the Election Finances Act, 1986.

(5) No person or corporation shall, — Rates to be charged to candidates for broadcasting time and advertising space

(a) charge a registered candidate, or any person acting with his or her knowledge and consent, a rate for broadcasting time on any broadcasting undertaking in the period beginning on the twenty-eighth day before the day immediately before voting day at an election and ending on the second day before voting day, that exceeds the lowest rate charged by the person or corporation for an equal amount of equivalent time on the same facilities made available to any other person in that period; or

(b) charge a registered candidate, or any person acting with his or her knowledge and consent, a rate for an advertisement in a periodical publication published or distributed and made public in the period referred to in clause (a)

that exceeds the lowest rate charged by the person or corporation for an equal amount of equivalent advertising space in the same issue of the periodical or in any issue of its published or distributed and made public in that period.

Comment: Compare with s. 38 (4) of the Election Finances Act, 1986.

Campaign Expenses

Authority to incur campaign expenses

220.-(1) The campaign expenses of a candidate registered under this Part shall be incurred only under the direction of the chief financial officer of the candidate by persons authorized by the chief financial officer.

Certificate of authority

(2) Every person authorized to incur a campaign expense by a chief financial officer of a registered candidate under subsection (1) shall, upon request, show a certificate, in the prescribed form, signed by the chief financial officer as proof of his or her authority.

Limitation on campaign expenses of candidate for head of council

221.-(1) The total campaign expenses incurred by a registered candidate in an election for the office of head of council of a municipality and any person, corporation or trade union acting on behalf of that candidate during any campaign period shall not exceed the aggregate amount of $5,500, plus,

(a) in the case of a municipality having more than 1,000 but not more than 20,000 electors, $0.40 per elector;

(b) in the case of a municipality having more than 20,000 but not more than 100,000 electors, $0.50 per elector; or

(c) in the case of a municipality having more than 100,000 electors, $0.45 per elector.

Comment: See Recommendation 32. Compare with s. 39 (2) of the Election Finances Act, 1986.

Limitation on campaign expenses of candidate for other offices

(2) Subject to subsection (3), the total campaign expenses incurred by a registered candidate in an election for the office of,

(a) member of council, other than head of council, of a municipality;

(b) member of council of a regional municipality where this office is required to be filled by the vote of the electors of an area municipality;

(c) member of a school board whose members are to be elected at elections required by law to be conducted by the same officers and in the same manner as elections of members of the council of a municipality; or

(d) member of a public utilities' commission whose members are to be elected at elections required by law to be conducted by the same officers and in the same manner as elections of members of the council of a municipality,

as the case may be, and any person, corporation or trade union acting on behalf of that candidate during any campaign period shall not exceed the aggregate amount of $3,500, plus,

(e) in the case of a municipality or a school board or public utilities' commission jurisdiction having more than 1,000 but not more than 20,000 electors, $0.40 per elector;

(f) in the case of a municipality or a school board or public utilities' commission jurisdiction having more than 20,000 but not more than 100,000 electors, $0.50 per elector; or

(g) in the case of a municipality or a school board or public utilities' commission jurisdiction having more than 100,000 electors, $0.45 per elector.

Comment: See Recommendation 33. Compare with s. 39 (2) of the Election Finances Act, 1986.

Limitation on campaign expenses of candidate for other offices where ward elections

(3) Where the municipality or the school board or public utilities' commission jurisdiction is divided into wards and the election is for an office to represent the electors of one or more of those wards the number of electors to be used in the calculation of the maximum amount of total campaign expenses that may be incurred by or on behalf of a registered candidate for the office shall be the total number of electors in the ward or wards, as the case may be.

Comment: See Recommendation 33.

(4) Where, prior to the campaign period, a candidate registered under this Part was a candidate registered under Part XIII, any campaign expenses incurred by or on behalf of the candidate during that period as a candidate registered under that Part in relation to an election in respect of which the candidate is registered under this Part shall be included in the calculation of the total campaign expenses of the candidate for an office under this section and, notwithstanding section 183, the provisions of this section govern.

Where candidate previously registered under Part XIII

(5) Subsection (4) applies notwithstanding the fact that the office in respect of which the candidate was registered under Part XIII is not the same office as the office in respect of which the candidate is registered under this Part.

The same

(6) For the purposes of this section, the number of electors in a municipality or a school board or public utilities' commission jurisdiction or a ward of the municipality or the school board jurisdiction shall be determined by the returning officer on the basis of information obtained from the voters' list prepared by the revising officer under section 46.

Determination of number of electors by returning officer

Comment: See Recommendation 34.

(7) After determining the number of electors under subsection (6), the returning officer shall calculate, for each office, the maximum amount of total campaign expenses that may be incurred by or on behalf of a registered candidate for an office under subsection (1) or (2), whichever is applicable, and certify this amount in the prescribed form and, no later than nomination day, deliver or cause to be delivered personally or send or cause to be sent by registered mail a copy of the certificate to each registered candidate for the office and to the Commission.

Calculation and certification of maximum campaign expenses by returning officer, etc.

(8) Certification of the maximum amount of total campaign expenses that may be incurred by or on behalf of a registered candidate for the office by the returning officer under subsection (7) shall be conclusive evidence of the fact and shall not be open to later challenge.

Certificate conclusive

222.-(1) Every person who or corporation or trade union which has any claim for payment in relation to a campaign expense shall submit his, her or its claim within three months after voting day to the chief financial officer of the registered candidate who incurred the expense.

Time for submission of claims for payment

Comment: See Recommendation 47. Compare with s. 34 (6) of the Election Finances Act, 1986.

(2) Every payment of a campaign expense shall be made by the chief financial officer of the registered candidate who incurred the campaign expense and, except where the campaign expense is less than $25, it shall be vouched for by a statement setting out the particulars and proof of payment. — Payment of expenses by chief financial officer

Comment: Compare with s. 39 (7) of the Election Finances Act, 1986.

(3) Where the chief financial officer of a registered candidate disputes or refuses to pay any claim for payment in relation to a campaign expense, that claim shall be considered to be a disputed claim and the claimant may bring an action for payment in any court of competent jurisdiction. — Disputed claims

Comment: Compare with s. 39 (8) of the Election Finances Act, 1986.

Auditors

223.-(1) Every candidate, at the time of appointment of his or her chief financial officer, shall appoint an auditor licensed under the Public Accountancy Act or a firm whose partners resident in Ontario are licensed under that Act and shall immediately advise the Commission of the full name and address of the auditor or firm. — Appointment of auditor; R.S.O. 1980, c. 405

Comment: Compare with s. 41 (1) of the Election Finances Act, 1986.

(2) Where an auditor appointed under subsection (1) ceases for any reason, including resignation, to hold office as such, ceases to be qualified as provided in subsection (1) or is or becomes ineligible as provided in subsection (3), the candidate shall immediately appoint another auditor licensed under the Public Accountancy Act or a firm whose partners resident in Ontario are licensed under that Act and shall immediately advise the Commission of the full name and address of the auditor or firm. — The same

Comment: Compare with s. 41 (2) of the Election Finances Act, 1986.

(3) No election officer and no registered candidate or chief financial officer of a registered candidate shall act as the auditor for the candidate, but nothing in this subsection makes ineligible the partners with whom or the firm with which this person is associated from acting as an auditor for the candidate. Persons not eligible

Comment: Compare with s. 41 (3) of the Election Finances Act, 1986.

(4) The auditor appointed under subsection (1) or (2) shall make a report to the chief financial officer of the candidate who appointed the auditor in respect of the financial statements, as required by sections 224 and 228, and shall make such examination of the financial statements and supporting documentation as is necessary to enable the auditor to report on them in accordance with generally accepted auditing standards. Auditor's report

Comment: See Recommendation 44. Compare with s. 41 (4) of the Election Finances Act, 1986.

(5) An auditor, in the report under subsection (4), shall make such statements as the auditor considers necessary in any case where, Where statement required

(a) the auditor has not received from the chief financial officer all the information and explanation that he or she required; or

(b) proper accounting records have not been kept by the chief financial officer so far as appears from the auditor's examination.

Comment: Compare with s. 41 (5) of the Election Finances Act, 1986.

(6) An auditor appointed under subsection (1) or (2) shall have access at all reasonable times to all records, documents, books, accounts and vouchers of the candidate who appointed him or her and is entitled to require from the chief financial officer of the candidate such information and explanation as in his or her opinion may be necessary to enable him or her to report as required by subsection (4). Right of access

Comment: Compare with s. 41 (6) of the Election Finances Act, 1986.

(7) The Commission shall subsidize the cost of auditors' services for registered candidates by paying to the auditor of a registered candidate in respect of an audit for the candidate under sections 224 and 228, the lesser of $800 and the amount of the auditor's account to the candidate. — Auditor's subsidy

Comment: See Recommendation 45. Compare with s. 41 (7) of the Election Finance Act, 1986.

(8) For an election in which the members of the council, school board or public utilities' commission, as the case may be, are elected by ward, the maximum amount of the subsidy for the cost of auditors' services for registered candidates under subsection (7) shall be $400. — Subsidy in ward elections

Financial Statements

224.-(1) The chief financial officer of every candidate registered under this Part shall, within six months after voting day, file with the Commission on Election Finances a financial statement, — Filing of financial statement by candidate

(a) of all income received and expenses incurred in the campaign period;

(b) of all campaign expenses, paid and outstanding, incurred in a campaign period and a statement of all disputed claims; and

(c) setting out all the information required to be recorded under section 216 that relates to the campaign period,

of the candidate for which the chief financial officer acts, together with the auditor's report on this financial statement as required by subsection 223 (4).

Comment: See Recommendation 44. Compare with s. 43 (1) of the Election Finances Act, 1986.

(2) The chief financial officer of every candidate registered under this Part shall, within six months after voting day, file a copy of the financial statement and the auditor's report referred to under subsection (1) with the returning officer of the municipality who was responsible for the conduct of the election for which the candidate was registered. — Copy of statement and report to returning officer

Comment: See Recommendation 44.

(3) Upon the request of a registered candidate, the Commission may extend the time prescribed in subsection (1) and (2) for the filing of the financial statement and auditor's report of the candidate. — Extension of time for filing

Comment: See Recommendation 44.

225.-(1) Where the financial statement of a registered candidate filed under section 224 shows a surplus, the surplus shall be immediately paid over to the returning officer who shall hold it in trust for the candidate for use in whole or in part by the candidate in the next general election. — Surplus to be paid to returning officer, etc.

Comment: See Recommendation 48. Compare with s. 43 (5) of the Election Finances Act, 1986.

(2) The returning officer shall not release the surplus held in trust for a candidate under subsection (1) to the candidate for use in whole or in part in the next general election until the returning officer has been notified by the Commission under section 199 that the candidate has become registered under this Part for that election. — Release of surplus to candidate

(3) Where the candidate for whose benefit the surplus is held in trust under subsection (1) becomes registered under this Part for a by-election that precedes the next general election, the returning officer, upon being so notified by the Commission, shall release the surplus to the candidate for use in whole or in part in that by-election. — The same

(4) No surplus shall be released under subsection (2) or (3) to the candidate for whose benefit it is held in trust under subsection (1) where the office for which the candidate has been, or will be, nominated in the election is not on the same council, school board or public utilities' commission, as the case may be, as the office in respect of which the surplus was produced. — Surplus to relate to office on same council, etc.

(5) Nothing in subsection (4) permits the release of a surplus to the candidate for whose benefit it is held in trust under subsection (1) where, — The same

(a) the office in respect of which the surplus was produced is the office of member of the council of an area municipality and, by virtue of having been elected the head of that council or having received the highest number of votes for that

office, or for any other reason, the candidate also holds the office of member of the council of the regional municipality; or

(b) the office in respect of which the surplus was produced is the combined office of member of the council of an area municipality and member of the council of the regional municipality,

and where the candidate has been, or will be, nominated for the office of chairman of the council of the regional municipality in the election.

The same

(6) Nothing in subsection (4) permits the release of a surplus to the candidate for whose benefit it is held in trust under subsection (1) where the office in respect of which the surplus was produced is the office of chairman of the regional municipality and where the candidate has been, or will be, nominated for,

(a) the office of member of the council of an area municipality and, by virtue of being elected to that office or receiving the highest number of votes for that office, or for any other reason, the candidate will also hold the office of member of the council of the regional municipality; or

(b) the combined office of member of the council of an area municipality and member of the council of the regional municipality.

Surplus to be turned over to municipality, etc.

(7) Where the candidate for whose benefit the surplus is held in trust under subsection (1) notifies the returning officer in writing of his or her intention not to seek nomination, or fails to seek nomination, or becomes ineligible to seek nomination, or fails to become registered, in the next general election, the surplus shall be paid into the general funds of the municipality, school board or public utilities' commission, as the case may be.

Comment: See Recommendation 48.

The same

(8) Upon the repeal of any by-law passed under section 194 or any resolution passed section 195 or 196, any surplus held by the returning officer by virtue of this section shall be paid into the general funds of the municipality, school board or public utilities' commission, as the case may be.

Failure of candidate not elected to file statement and report

226.-(1) Where the chief financial officer of a registered candidate who is not declared elected fails to file a financial statement as required by section 224, together with the auditor's report on the financial statement as required by subsection 223 (4), the candidate, in addition to any other penalty, is ineligible to be nominated as a candidate in any subsequent election relating to any office for a period of six years from the date of the election, unless prior to that subsequent election the candidate or the chief financial officer has filed the required financial statement and auditor's report with the Commission and a copy of the statement and report with the returning officer of the municipality.

Comment: See Recommendation 49. Compare with s. 44 (1) of the Election Finances Act, 1986.

Vacation of office

(2) Where a registered candidate is declared elected,

(a) if the total campaign expenses incurred by the candidate during the campaign period relating to the election at which the candidate was elected exceeds the amount determined under section 221; or

(b) if the chief financial officer of the candidate fails to file a financial statement as required by section 224, together with the auditor's report on the financial statement as required by subsection 223 (4),

the Commission shall notify in writing the candidate and the council or school board or public utilities' commission, as the case may be, to which the candidate was elected and, if the council or board or commission finds no mitigating reason for noncompliance, the office to which the candidate was elected shall be immediately declared vacant and, in addition, the candidate is liable to any other penalty that may be imposed under any Act.

Comment: See Recommendation 49. Compare with s. 44 (2) of the Election Finances Act, 1986.

Disqualification

(3) Where the office to which a registered candidate was declared elected is subsequently declared vacant as a result of the reason given in clause (2)(b), the candidate, in addition to any other penalty, is ineligible to be nominated as a candidate in any subsequent election relating to any office for a period of six years from the date of the election, unless prior to that subsequent election the

candidate or the chief financial officer has filed the required statement and report with the Commission and the returning officer of the municipality.

Comment: See Recommendation 49. Compare with ss. 44 (1) and (2) of the Election Finances Act, 1986.

Failure of candidate not elected to turn over surplus

227.-(1) Where the financial statement of a registered candidate who is not declared elected shows a surplus and the chief financial officer of the candidate fails to pay over the surplus to the returning officer as required by section 225, the candidate, in addition to any other penalty, is ineligible to be nominated as a candidate in any subsequent election relating to any office for a period of six years from the date of the election, unless prior to that subsequent election the candidate or the chief financial officer has paid over the surplus to the returning officer.

Vacation of office

(2) Where a registered candidate is declared elected, if the financial statement of the candidate shows a surplus and the chief financial officer of the candidate fails to pay over the surplus to the returning officer as required by section 225, the returning officer shall notify in writing the candidate and the council or school board or public utilities' commission, as the case may be, to which the candidate was elected and, if the council or school board or public utilities' commission finds no mitigating reason for noncompliance, the office to which the candidate was elected shall be immediately declared vacant and, in addition, the candidate is liable to any other penalty that may be imposed under any Act.

Disqualification

(3) Where the office to which a registered candidate was declared elected is subsequently declared vacant as a result of the reason given in subsection (2), the candidate, in addition to any other penalty, is ineligible to be nominated as a candidate in any subsequent election relating to any office for a period of six years from the date of the election, unless prior to that subsequent election the candidate or the chief financial officer has paid over the surplus to the returning officer.

Where chief financial officer ceases to hold office

228.-(1) Where the chief financial officer of a registered candidate ceases for any reason, other than death or incapacity, to hold office as such during a campaign period, the chief financial officer shall, within forty-five days following the day on which he or she ceased to hold office, file with the Commission a financial statement of income and expenses of the candidate for whom the chief financial

officer acted for the period commencing with the later of the day of his or her appointment and the day when the candidate became registered with the Commission and ending on the day on which he or she ceased to hold office, together with the auditor's report on the financial statement as required by subsection 223 (4).

Comment: See Recommendation 44. Compare with s. 45 (2) of the Election Finances Act, 1986.

(2) Where, for any reason, the chief financial officer fails to file the financial statement required by subsection (1), or where the chief financial officer has died or become incapacitated, the candidate for which the chief financial officer acted shall, within sixty days following the day on which the chief financial officer ceased to hold office, file with the Commission the financial statement required by subsection (1), together with the auditor's report on the financial statement as required by subsection 223 (4). Where financial statements not filed

Comment: See Recommendation 44. Compare with s. 45 (3) of the Election Finances Act, 1986.

(3) A copy of the financial statement, together with a copy of the auditor's report, filed with the Commission under subsection (1) or (2) shall, at the same time, be filed with the returning officer of the municipality who was responsible for the conduct of the election for which the candidate to whom these documents relate was registered. Copy of statement and report to returning officer

Comment: See Recommendation 44.

Tax Credit

229.-(1) Every person who and every corporation or trade union which made a contribution to a candidate registered under this Part during the campaign period of an election may at any time apply, in the prescribed form, to the returning officer of the municipality who was responsible for conducting the election to receive a tax credit as provided by this section. Application for tax credit

Comment: See Recommendation 38.

(2) The tax credit which a contributor is eligible to receive under subsection (1) is an amount equal to, Calculation of tax credit

(a) 75 per cent of the total amount contributed by the contributor to all candidates if the amount contributed does not exceed $200;

(b) $150 plus 50 per cent of the amount by which the total amount contributed by the contributor to all candidates exceeds $200 and does not exceed $800; or

(c) the lesser of,

(i) $450 plus 33 1/3 per cent of the amount by which the total amount contributed by the contributor to all candidates exceeds $800 if the total amount contributed exceeds $800, and

(ii) $750,

provided that payment of each amount that is included in the total amount contributed by the contributor to all candidates is proven by receipts in the prescribed form that are signed by a recorded agent of the candidate and that contain the information prescribed to be shown on these receipts.

Comment: See Recommendation 43. Compare with s. 58 of the Election Finances Act, 1986.

Tax credit to be first applied to debts

(3) A tax credit as determined under subsection (2) shall first be applied by the returning officer to reduce any taxes or other debts then owing to the municipality by the contributor.

Where no debt owing

(4) Where the contributor does not owe any taxes or other debts to the municipality, the returning officer shall then pay, by cheque, to the contributor an amount equal to the amount of the tax credit which the contributor is eligible to receive under subsection (2).

Recovery of tax credit from area municipalities

(5) Where the contribution upon which the application for a tax credit under subsection (1) is based was made to a registered candidate in an election for the office of chairman of the council of a regional municipality the returning officer shall recover the amount of the tax credit provided to any contributor under subsection (3) or (4) from the area municipalities by billing each area municipality for such proportionate share of that amount as may be determined by by-law of the council of the regional municipality.

(6) Where the contribution upon which the application for a tax credit under subsection (1) is based was made to a registered candidate in a school board election the returning officer shall recover the amount of the tax credit provided to any contributor under subsection (3) or (4) from the school board by deducting that amount from any funds that the municipality is required to pay over to the school board. — Recovery of tax credits from school boards

Comment: See Recommendation 38.

(7) Where the contribution upon which the application for a tax credit under subsection (1) is based was made to a registered candidate in a public utilities' commission election the returning officer shall recover the amount of the tax credit provided to any contributor under subsection (3) or (4) from the public utilities' commission by billing the public utilities' commission for that amount. — Recovery of tax credits from p.u.c.

Comment: See Recommendation 38.

(8) No tax credit shall be provided to a contributor under subsection (3) or (4) until the Commission has notified the returning officer in writing that all of the financial statements and auditor's reports filed with it by the chief financial officers of the registered candidates in the election as required by section 224 or 228 have been examined. — No tax credits to be provided until notice from commission

(9) Tax credits shall be provided to contributors only during the one-year period following receipt of the notice given by the Commission under subsection (8). — Period for providing tax credits

(10) No tax credit shall be provided to a contributor under subsection (3) or (4) for a contribution to a registered candidate where the chief financial officer of the candidate has failed to file the financial statement and auditor's report required by section 224 or 228 or where the financial statement and auditor's report of the candidate have been found by the Commission to be unsatisfactory. — Where no tax credit to be provided

Access to Documents

230.-(1) All documents filed with the Commission or the returning officer of a municipality under this Part are public records and may be inspected by any person upon request at the office of the Commission or of the returning officer during normal office hours. — Inspection of documents on file with Commission or returning officer

Comment: Compare with s. 16 (1) of the Election Finances Act, 1986.

(2) Any person may make extracts from the documents referred to in subsection (1) and is entitled to copies of the documents upon payment for the preparation of the copies, in the case of the Commission, at such rate as the Commission may determine or, in the case of the returning officer, at such rate as the returning officer charges for the preparation of copies of other documents in his or her office. Extracts and copies

Comment: Compare with s. 16 (2) of the Election Finances Act, 1986.

(3) No person, corporation or trade union shall use any of the information contained in any document filed with the Commission or the returning officer under this Part for the purpose of commercial solicitation. Not to be used for commercial solicitation

Comment: Compare with s. 16 (3) of the Election Finances Act, 1986.

Forms

231. All applications, returns, statements, balance sheets and other documents to be filed with the Commission shall be filed in the form prescribed for them by the Commission. Forms

Comment: Compare with s. 47 of the Election Finances Act, 1986.

Powers and Duties of Commission

232. Except as otherwise provided in this Part, the provisions of the Election Finances Act, 1986 relating to the powers and duties of the Commission apply with necessary modifications to the Commission in the administration of this Part. Powers and duties

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Offences

233.-(1) The chief financial officer of a candidate registered under this Part who contravenes section 224 or 228 is guilty of an offence and on conviction is liable to a fine of not more than $5,000. Offence by chief financial officer

Comment: Compare with s. 48 (1) of the Election Finances Act, 1986.

(2) Where any contravention of this Part that is an offence by virtue of subsection (1) is committed by a chief financial officer of a candidate registered under this Part, the candidate for which the chief financial officer acts is guilty of an offence and on conviction is liable to a fine of not more than $5,000. — Offence by candidate

Comment: Compare with s. 48 (2) of the Election Finances Act, 1986.

234. Where the total campaign expenses incurred by a candidate registered under this Part and any person or organization acting on behalf of the candidate during the campaign period exceeds the amount determined under section 221 for the office subject to election, the candidate is guilty of an offence and on conviction is liable to a fine of not more than $5,000 plus the amount by which the total campaign expenses of the candidate exceeded the amount determined under section 221. — Offence for exceeding campaign expense limits

235. Where the financial statement of a candidate registered under this Part shows a surplus and the surplus is not paid over to the returning officer as required by section 225, the candidate is guilty of an offence and on conviction is liable to a fine of not more than $5,000 plus the amount of the surplus. — Offence for failure to pay over surplus

236. Every corporation or trade union that contravenes any of the provision of this Part is guilty of an offence and on conviction is liable to a fine of not more than $50,000. — Offence by corporation or trade union

Comment: Compare with s. 49 of the Election Finances Act, 1986.

237. Every person who contravenes any of the provisions of this Part, for which contravention no penalty is otherwise provided, is guilty of an offence and on conviction is liable to a fine of not more than $5,000. — General offence

Comment: Compare with s. 50 of the Election Finances Act, 1986.

238. No person shall obstruct a person making an investigation or examination under this Part or withhold from him or her or conceal or destroy or alter any books, papers, documents or things relevant to the subject matter of the investigation or examination. — Offence for obstructing investigation, etc.

Comment: Compare with s. 51 of the Election Finances Act, 1986.

239. No person shall knowingly make a false statement in any application, return, financial statement or other document filed with the Commission under this Part. — Offence for false statement

Comment: Compare with s. 52 of the Election Finances Act, 1986.

240. No person shall knowingly give false information to a chief financial officer or other person authorized to accept contributions. — Offence for false information

Comment: Compare with s. 53 of the Election Finances Act, 1986.

241.-(1) A prosecution for an offence under this Part may be instituted against a trade union in the name of the trade union and, for the purposes of any such prosecution, the trade union shall be deemed to be a person. — Style of prosecution of party, constituency association or union

Comment: Compare with s. 54 (1) of the Election Finances Act, 1986.

(2) Any act or thing done or omitted by an officer or agent of a trade union within the scope of his or her authority on behalf of the trade union shall be deemed to be an act or thing done or omitted by the trade union. — Vicarious responsibility

Comment: Compare with s. 52 (2) of the Election Finances Act, 1986.

242.-(1) No prosecution shall be instituted under this Part without the consent of the Commission and no prosecution shall be instituted more than one year after the facts upon which the prosecution is based first came to the knowledge of the Commission. — Consent of Commission and limitation

Comment: Compare with s. 55 of the Election Finances Act, 1986.

(2) Notwithstanding subsection (1), the Attorney General may institute a prosecution under this section at any time. — Exception

PART XV

COMPLEMENTARY AMENDMENTS

243.-(1) Subsection 14 (1) of the Assessment Act, being chapter 31 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 47, section 3, is further amended,

(a) by striking out "Tuesday following the first Monday of September" in the first and second lines and inserting instead "15th day of May";

(b) by striking out "September" in the second and third lines and inserting instead "June"; and

(c) by striking out "Municipal Elections Act" in the third line and inserting instead "Local Government Elections Act".

Comment: See Recommendations 1 and 20.

(2) Subsection 14 (2) of that Act is further amended,

(a) by striking out "Tuesday following the first Monday of September" in the first and second lines and inserting instead "15th day of May"; and

(b) by striking out "September" in the second line and inserting instead "June".

Comment: See Recommendation 20.

(3) Subsection 14 (4) of that Act is further amended by striking out "Municipal Elections Act" in the second line and inserting instead "Local Government Elections Act".

Comment: See Recommendation 1.

244.-(1) The definition of "polling list" in paragraph 36 of subsection 1 (1) of the Education Act, being chapter 129 of the Revised Statutes of Ontario, 1980, is amended,

(a) by striking out "polling list" in the first line and wherever else in the Act it appears and inserting instead "voters' list";

(b) by striking out "Municipal Elections Act" and inserting instead "Local Government Elections Act"; and

(c) by renumbering the amended paragraph to 74 and placing it in the proper numerical sequence in subsection 1 (1).

(2) Clause 59 (25)(a) of that Act is amended by striking out "send to the clerk of each municipality concerned, by registered mail within forty-eight hours after the closing of nominations" in the sixth, seventh, eighth and ninth lines and inserting instead "cause to be served personally on, or sent by registered mail to, the clerk of each municipality concerned, within forty-eight hours after the closing of nominations".

(3) Clause 59 (30)(c) of that Act is amended by striking out "send to the clerk of each municipality concerned, by registered mail within forty-eight hours after the closing of nominations" in the seventh, eighth and ninth lines and inserting instead "cause to be served personally on, or sent by registered mail to, the clerk of each municipality concerned, within forty-eight hours after the closing of nominations".

(4) Clause 113 (21)(a) of that Act is amended by striking out "send to the clerk of each municipality concerned, by registered mail within forty-eight hours after the closing of nominations" in the sixth, seventh, eighth and ninth lines and inserting instead "cause to be served personally, or sent by registered mail to, the clerk of each municipality concerned, within forty-eight hours after the closing of nominations".

(5) Subsection 194 (1) of that Act is amended by striking out "writ in the county or district court" in the second and third lines and inserting instead "issuing a statement of claim in the District Court".

(6) Subsection 194 (1) of that Act is amended by striking out "107 to 110 and 114 of the Municipal Elections Act" and inserting instead "143 to 149 and 153 of the Local Government Elections Act".

(7) Subsection 194 (5) of that Act is amended by striking out "106 of the Municipal Elections Act" and inserting instead "142 of the Local Government Elections Act".

(8) Subsection 194 (6) of that Act is amended by striking out "Municipal Elections Act" in the first and fourth lines and inserting instead "Local Government Elections Act".

(9) The heading for Part VII of that Act is amended by striking out "Qualifications" and the comma that appears after it.

(10) Section 195 of that Act is repealed.

(11) Section 196 of that Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 53, is repealed.

(12) Subsection 198 (1) of that Act is amended by inserting after "elected" in the fifth line "and, if applicable, a resolution has been passed by the board as required by section 137 of the Local Government Elections Act to authorize an appointment to be made to fill the vacancy in accordance with this Part".

Comment: See Recommendations 84 and 85.

(13) Subsection 198 (2) of that Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 54, is further amended by inserting after "elected" in the fourth line "and, if applicable, a resolution has been passed by the board as required by section 137 of the Local Government Elections Act to authorize an appointment to be made to fill the vacancy in accordance with this Part".

Comment: See Recommendations 84 and 85.

(14) Subsection 198 (4) of that Act is amended,

(a) by striking out "Municipal Elections Act" and inserting instead "Local Government Elections Act";

(b) by striking out "on or before the 31st day of March of an election year" and inserting instead "in an election year 120 days or more prior to voting day for the general election";

(c) by striking out "an election" in the fifth and ninth lines and inserting instead "a by-election"; and

(d) by striking out "clerk" in the seventh line and inserting instead "returning officer".

Comment: See Recommendation 86.

(15) Section 203 of that Act is amended by striking out "Municipal Elections Act" in the third and fourth lines and inserting instead "Local Government Elections Act".

(16) Subsection 204 (2) of that Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 55, is further amended by striking out "Municipal Elections Act" in the second and sixth lines and inserting instead "Local Government Elections Act".

(17) That Act is amended by adding to it the following Part and section:

PART VII.1

Plebiscites

Plebiscite

206a. Where the elections of a board are held under the Local Government Elections Act, the board may by resolution submit to the vote of the electors of the board at the next general election any question pertaining to a matter over which the board has jurisdiction.

Comment: See Recommendation 88.

(18) The definition of "board" in section 277c of that Act, as enacted by the Statutes of Ontario, 1986, chapter 29, section 11, is amended by striking out "Municipal Elections Act" in the last line of clause (a) and inserting instead "Local Government Elections Act".

(19) The definition of "regular election" in section 277c of that Act, as enacted by the Statutes of Ontario, 1986, chapter 29, section 11, is amended,

(a) by striking out "regular election" in the first line and wherever else in this Part of the Act it appears and inserting instead "general election";

(b) by striking out "Municipal Elections Act" in the first and second lines and inserting instead "Local Government Elections Act"; and

(c) by placing the amended paragraph in the proper alphabetical sequence in the section.

(20) Subsection 227-1 of that Act, as enacted by the Statutes of Ontario, 1986, chapter 29, section 11, is amended by inserting after "section" in the fourth line "and, if applicable, a resolution has been passed by the section as required by section 137 of the Local Government Elections Act to authorize to be made to fill the vacancy in accordance with this Part".

245.-(1) Paragraph 22 of section 1 of the Municipal Act, being chapter 302 of the Revised Statutes of Ontario, 1980, chapter 302, is repealed and the following is substituted for it:

8a. "general election" means an election defined by subsection 1 (1) of the Local Government Elections Act and required to be held triennially under subsection 23 (1) of that Act.

(2) Sections 37 and 38 of that Act and the subheadings that appear above them are repealed.

(3) Clause 39 (a) of that Act is amended by striking out "section 38" and inserting instead "section 43 of the Local Government Elections Act".

(4) Clause 38 (d) of that Act is amended,

(a) by striking out "clerk" in the first line and inserting instead "returning officer"; and

(b) by striking out "subsection 92 (7) of the "Municipal Elections Act" and inserting instead "subsection 130 (8) of the Local Government Elections Act".

(5) Section 40 of that Act is repealed.

(6) Subsection 44 (1) of that Act is amended by striking out "writ in the county or district court" in the second and third lines and inserting instead "issuing a statement of claim in the District Court".

(7) Subsection 44 (4) of that Act is amended by striking out "107 to 114 of the Municipal Elections Act" in the first and second lines and inserting instead "143 to 153 of the Local Government Elections Act".

(8) Subsection 44 (5) of that Act is amended by striking out "106 of the Municipal Elections Act" in the second and third lines and inserting instead "142 of the Local Government Elections Act".

(9) Sections 45 through 47 of that Act are repealed.

(10) Subsection 332 (1) of that Act is repealed.

(11) Subsection 332 (1) of that Act is re-enacted as section 332.

246. Any reference to the Municipal Elections Act or to any definition or provision in that Act in any other Act is a reference to the Local Government Elections Act or to any related definition or provision in this Act.

Reference to M.E.A. deemed to be reference to L.G.E.A.

PART XVI

MISCELLANEOUS

247. No change in the method of election or in the composition of the council of a municipality or of a school board shall be made after the 15th day of January in an election year. — No change in election method, etc.

Comment: See Recommendation 82.

248. The Municipal Elections Act, being chapter 308 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 47, section 24, 1982, chapters 2 and 37, and 1985, chapters 4 and 7, is repealed. — Repeal

249. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. — Commencement

250. The short title of this Act is the Local Government Elections Act, 1987. — Short title

Comment: See Recommendation 1.